Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 14. Natural Resources

Complete Title

(continued)

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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TITLE 14. NATURAL RESOURCES

NOMENCLATURE CROSS–REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross–Reference Table for the new organizational headings used in this Title.)

OLD HIERARCHY	REVISED HIERARCHY
Division	Division
Part	Subdivision
Chapter	Chapter
Subchapter	Subchapter
Article	Article
Section	Section

Title 14. Natural Resources

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Division 3. Department of Parks and Recreation

Chapter 1. General

§ 4300. Authority.

All sections of Chapters 1 through 8 are adopted pursuant to Sections 5001.5, 5003 and 5008 of the Public Resources Code and apply to all units under control of the Department of Parks and Recreation unless otherwise indicated.

(a) When it is necessary to refer to one or more units under control of the Department of Parks and Recreation by terms other than their classification, the terms "unit of the State Park System," "unit of the State Vehicular Recreation Area and Trail System," or simply "unit" will be used.

(b) A title, where used, does not limit the language of a section.

(c) These sections are severally adopted. If one or more of these sections is deemed invalid, the remaining sections are intended to remain in effect. Where a section herein or rule is amended or repealed, acts and omissions prior thereto may be prosecuted as though such section or rule had not been so amended or repealed.

(d) Special regulations for an area or a subject do not preclude the application of general regulations unless expressly so indicated.

(e) The privilege of any person to be present in any unit under control of the Department of Parks and Recreation is hereby expressly conditioned upon compliance by that person with all applicable laws and regulations. In addition to other penalties prescribed by law, violation of any law or regulation shall subject the violator to ejection from the unit in which the violation occurs.

(f) This provision shall be enforced by peace officers having concurrent jurisdction in any unit in which a violation of regulations may take place.

(g) Nothing contained herein shall be construed to authorize or prohibit any act or acts which are expressly authorized or prohibited by statute of the State of California or by ordinance of a governmental subdivision thereof with concurrent jurisdiction over a unit or units controlled by the Department of Parks and Recreation.

NOTE: Authority cited: Sections 5000.5 and 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Repealer of Chapters 1 and 2 (Sections 4300 through 4920) and new Chapters 1 through 12 (Sections 4300 through 4920) filed 4–7–71; effective thirtieth day thereafter. For history of former sections, see Register 68, Nos. 14, 27; 69, Nos. 6, 27, 43, 50; 70, Nos. 13, 20, 35.
2. Repealer of Chapters 1–9 (Sections 4300–4702, not consecutive) and new Chapters 1–8 (Sections 4300–4701, not consecutive) filed 1–6–77; effective thirtieth day thereafter (Register 77, No. 2). For former history, see Registers 68, Nos. 14, 27; 69, Nos. 6, 27, 43, 50; 70, Nos. 13, 20, 35; 71, Nos. 15, 49; 72, Nos. 4, 11, 21, 50; 73, Nos. 5, 26, 30, 47; 74, Nos. 25, 38; 75, Nos. 3, 33.
3. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86. No. 5).
4. Change without regulatory effect amending first paragraph and adding subsection (a)–(g) designators filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4301. Definitions.

(a) "Department," as used herein, means the State Department of Parks and Recreation, having a headquarters in Sacramento, California.

(b) "Director," as used herein, means Director of Parks and Recreation.

(c) "Deputy Director of Off–Highway Motor Vehicles," means the person in charge of Division of Off–Highway Motor Vehicle Recreation.

(d) Division Chief means the person in charge of an administrative area or division consisting of units and districts, under control of the Department of Parks and Recreation.

(e) "District Superintendent" means the person in charge of an administrative district consisting of one or more units under control of the Department of Parks and Recreation.

(f) "Person," as used herein, shall be construed to mean and include natural persons, firms, copartnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

(g) "Nighttime," is any time from one–half hour after sunset to one–half hour before sunrise.

(h) "Water–ski" means any aquaplane, water–ski, or any other device used, or which may be used, for carrying persons or property while being towed behind a boat.

(i) Posting of Notices. The term "posted" as used herein, unless otherwise indicated, shall mean and require that the Department shall set aside at the district headquarters and at the unit affected and in a location convenient to the general public, a bulletin board or similar device upon which shall be posted all special instructions, orders, pertaining to units of the district including but not limited to special hours of operation, swimming and boating restrictions, hunting and camping restrictions, and special instructions pertaining to areas where activities are curtailed or restricted. Proof of posting shall be filed in the offices of the division chiefs or the Sacramento California Office of the Division of Off–Highway Motor Vehicle Recreation.

(j) Special Events. Special Events are activities which are beyond the normal scope of activities and operations conducted in units under control of the Department of Parks and Recreation. Consistent with existing state policies and laws, District Superintendents may approve by permit a Special Event when it is found to be in the best interest of the Department of Parks and Recreation and is conducted by an appropriate sponsor at no net expense to the state. Special Event permits are required when fees are charged by the event sponsor beyond the regular State Park Facility Use Fees, when the Department has determined the event will create a greater potential hazard or liability to the State than incurred through typical operations, when the activity includes the exclusive use of an area within the park, when the activity interferes significantly with the public's use of an area, when additional staffing or staff time is required, or where items or services are sold. Special Event permits are required for any activity within the State Park System which meet any of these criteria, and which occur wholly or partially within or on any property owned, operated, or administered by the Department. Upon a finding by the District Superintendent that a special event is consistent with the unit's use, he/she may issue a Special Event permit for such use. The terms and conditions of such permit shall prevail where inconsistent with the rules herein when approved by the Division Chief, Chief of Off Highway Motor Vehicle Recreation Division or the District Superintendent.

(k) Juveniles. The term juvenile as used herein shall be construed to mean any person under the age of 18 years.

(*l*) "Aircraft" means any powered, unpowered, or towed device that is used or intended to be used to carry a person or persons in the air.

(m) Beach. Unless the context otherwise requires, the use of the word "beach" herein means that portion of a unit under control of the Department of Parks and Recreation between the edge of a body of water, extending inland, to whichever comes first: a fence, a distinctive berm or cliff, a line of vegetation, or an officially erected sign specifically designating the boundaries of the beach.

(n) Road. A road is that portion of a unit improved, designed, ordinarily used, or designated for vehicular travel, including vehicular trails within State Vehicular Recreation Area and Trail System.

(o) Designate. Designate means to indicate, specify, or make recognizable by some mark, sign, or name.

(p) Animals. An animal is any animate being which is endowed with the power of voluntary motion; animate being, not human.

(q) Placing of Road Signs. The term "Placing of Road Signs," as used herein, means the placing of signs regulating the operation of motor vehicles, including, but not limited to, stop signs, yield signs, and speed lim-

it signs, which is done in accordance with those instructions contained in section 21401 of the California Vehicle Code.

(r) Placing of Vehicle Recreation Trail Signs. The term "Placing of Vehicle Recreation Trail Signs," as used herein, means the placing of signs regulating the operation of motor vehicles within the State Vehicular Recreation Area and Trail System which is done in accordance with section 38280 of the California Vehicle Code.

(s) Facility. Facility means any structure or combination of structures, or any feature or entity modified by humans for human use.

(t) Unit. Unit means any named and classified unit under control of the Department of Parks and Recreation, as well as any Department projects which have not yet been named or classified.

(u) Camping is defined as:

1) erecting a tent or shelter or arranging bedding, or both, for purposes of, or in such a way as will permit, remaining overnight.

2) Use of houseboats or boats for the purpose of sleeping during the nighttime hours, whether anchored, moored or beached.

3) Use of any parked or standing vehicle for the purpose of sleeping during nighttime hours.

(v) Rockhounding is defined as being the recreational gathering of stones and minerals found occurring naturally on the undisturbed surface of the land, including panning for gold in the natural water-washed gravel of streams.

(w) Float Material is defined as materials only occurring naturally on the surface of the land.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 21401 and 38280, Vehicle Code.

HISTORY

1. New subsections (q) and (r) filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment of subsection (j) filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
4. Change without regulatory effect amending subsections (d), (i) and (j) and adding subsections (u)–(w) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4302. Use of Facilities, Payment.

No person shall use or be present in any portion of a unit under control of the Department of Parks and Recreation for which a use fee has been established by the Department, without paying such fee, with the exception of units which require payment of fees upon exit. This shall not apply to state officers and employees on official business nor to persons excepted by the Department for administrative reasons.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5010, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4304. Aircraft.

No person, using any aircraft, shall land, taxi on or take off from any body of water or from any portion of any unit if not specifically approved by the Department and the unit has been designated for landing of aircraft. No person shall parachute into, fly an unlicensed aircraft, ultralight vehicle, or hang glider over, or parasail or balloon over any State Park unit at an altitude of less than 500 feet unless authorized by the Department by posted order in accordance with section 4301(i).

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.7, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4305. Animals.

(a) Protection. No person shall molest, hunt, disturb, harm, feed, touch, tease, or spotlight any kind of animal or fish or so attempt.

(b) No person shall injure, trap, take, net, poison, or kill, any kind of animal or fish, or so attempt, except that fish and bait may be taken, other than for commercial purposes in accordance with state laws and regulations.

(c) Where hunting in a state recreation area or within the State Vehicular Recreation Area and Trail System or portion thereof is permitted by regulations herein, so much of this section as is inconsistent therewith shall be deemed inapplicable, provided hunting is conducted in the manner specified.

(d) This section does not apply to activities undertaken by the Department in conjunction with its resource management activities.

(e) Feeding. In units or portions thereof where posted in accordance with Section 4301(i), no person shall feed any wildlife or feral animal listed on such posting.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003.1 and 5019.56, Public Resources Code.

HISTORY

1. Amendment filed 12–4–86; effective thirtieth day thereafter (Register 86, No. 49).
2. Amendment of section filed 8–29–91 as an emergency; operative 8–29–91 (Register 91, No. 51). A Certificate of Compliance must be transmitted to OAL 12–27–91 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of law and new section filed 2–5–92; operative 2–5–92 (Register 92, No. 12).
4. Change without regulatory effect amending subsection (a), adding subsection (b) designator to and amending second paragraph, repealing third paragraph, adding subsection (c) and (d) designators to former fourth and fifth paragraphs and subsection relettering filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4306. Plants and Driftwood.

(a) No person shall willfully or negligently pick, dig up, cut, mutilate, destroy, injure, disturb, move, molest, burn, or carry away any tree or plant or portion thereof, including but not limited to leaf mold, flowers, foliage, berries, fruit, grass, turf, humus, shrubs, cones, and dead wood, except in specific units when authorization by the Department to take berries, or gather mushrooms, or gather pine cones, or collect driftwood is posted at the headquarters of the unit to which the authorization applies. Any collecting allowed by authority of this section may be done for personal use only and not for commercial purposes.

(b) No person may gather more than five pounds of such material except driftwood each day in the State Park System or State Vehicular Recreation Area and Trail System.

(c) No person may gather more than 50 pounds or one piece of driftwood each day in the State Park System or State Vehicular Recreation and Trails System.

(d) Use of tools, vehicles, and equipment for the collecting of driftwood is prohibited.

(e) Upon a finding that it will be in the best interest of the Department of Parks and Recreation, the District Superintendent may, by posting, authorize the collection of driftwood from specified units on a temporary basis, either by the general public or by commercial operators, if necessary, in quantities, for purposes, and by means other than as specified by this section.

(f) This section does not apply to activities undertaken by the Department in conjunction with its resource management activities.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.65 and 5007.1, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

3. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
4. Change without regulatory effect adding subsection (a)–(f) designators filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4307. Geological Features.

(a) No person shall destroy, disturb, mutilate, or remove earth, sand, gravel, oil, minerals, rocks, paleontological features, or features of caves.

(b) Rockhounding may be permitted as defined in Section 4301(v).

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4308. Archaeological Features.

No person shall remove, injure, disfigure, deface, or destroy any object of archaeological, or historical interest or value.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4309. Special Permits.

The Department may grant a permit to remove, treat, disturb, or destroy plants or animals or geological, historical, archaeological or paleontological materials; and any person who has been properly granted such a permit shall to that extent not be liable for prosecution for violation of the foregoing.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.65 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4310. Litter.

No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes, waste paper, cans, or other litter in a unit except in a receptacle designated for that purpose, and no person shall import any litter, or import and deposit any litter into or in any unit from other places.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.7, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4311. Fire in Stoves, Smoking.

No person shall

(a) light, build, use, or maintain a fire within a unit except in a camp stove or a fireplace provided, maintained, or designated by the Department for such purpose. Portable camp stoves may be used in portions of units approved by the Department.

(b) Fires shall at all times be maintained in a safe condition that does not threaten any person, natural or structural feature.

(c) Upon a finding of extreme fire hazard by the Department no person shall smoke or build fires in portions of units other than those designated by the Department for such purposes.

(d) This section does not apply to fire fighters or Department employees carrying out fire suppression or resource management activities approved by the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect adding subsection (a)–(d) designators and amending subsections (a) and (b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4312. Control of Animals.

(a) No person shall permit a dog to run loose, or turn loose any animal in any portion of a unit, except upon written authorization by the District Superintendent.

(b) No person shall keep an animal in any unit except under his/her immediate control.

(c) No person shall keep a noisy, vicious, or dangerous dog or animal or one which is disturbing to other persons, in any unit and remain therein after he/she has been asked by a peace officer to leave.

(d) No person shall permit a dog or a cat to remain outside a tent, camper, or enclosed vehicle during the night.

(e) No person shall bring a dog into, permit a dog to enter or remain, or possess a dog in units under control of Department of Parks and Recreation unless the dog is on leash of no more than six feet in length and under the immediate control of a person or confined in a vehicle.

(f) No person shall bring a dog into, permit a dog to enter or remain, or possess a dog:

1) beyond the limits of campgrounds, picnic areas, parking areas, roads, structures or in posted portions of units except as provided elsewhere in this section.

2) on any beach adjacent to any body of water in any unit except in portions of units designated for dogs.

(g) In state recreation areas open to hunting pursuant to Public Resources Code, Section 5003.1, dogs may be used to assist in hunting. Such dogs shall not be permitted to pursue or take any wildlife other than that being hunted.

(h) Subsections e) and f) shall not apply to trained "seeing eye," "signal," or "service" dogs used to guide a physically impaired person there present, or dogs that are being trained to become "seeing eye," "signal," or "service" dogs.

(g) Grazing. No person shall graze, herd or permit livestock to enter or remain inside a unit without specific written authorization of the Department, except for grazing by animals used for riding or packing under direct control of visitors or concessionaires.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003.1 and 508, Public Resources Code.

HISTORY

1. Amendment of subsection (c) filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect amending section heading and section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4313. Weapons and Traps.

(a) No person shall carry, possess or discharge across, in or into any portion of any unit any weapon, firearm, spear, bow and arrow, trap, net, or device capable of injuring, or killing any person or animal, or capturing any animal, or damaging any public or private property, except in underwater parks or designated archery ranges where the Department of Parks and Recreation finds that it is in its best interests.

(b) Nothing herein contained shall be construed in derogation of the use of weapons permitted by law or regulation and to be used for hunting in any unit, or portion thereof, open to hunting.

(c) Firearms not having a cartridge in any portion of the mechanism, other unloaded weapons or devices such as traps, nets, and bows and arrows may be possessed within temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased, or stored in a manner that will prevent their ready use.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003.1 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a)–(c) designators and amending newly designated subsections (a) and (c) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4314. Fireworks.

(a) No person shall possess, discharge, set off, or cause to be discharged, in or into any portion of a unit any firecrackers, torpedoes, rockets, fireworks, explosives, or substances harmful to the life or safety of persons.

(b) The Department may grant exceptions to this section for specified locations and periods of time upon finding that such activity will not endanger persons, property, or resources.

(c) This section does not apply to explosives lawfully possessed or used under the direction of the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect adding subsection (a)–(c) designators filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4315. Grazing.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.65 and 5008, Public Resources Code.

HISTORY

1. New section filed 5–26–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4316. Commercial Filming.

Except where authorized by the Department, no person shall photograph, videotape or film for commercial (profit and sale) purposes in any unit, or portion thereof, owned, operated or administered by the Department without a permit from the California Film Commission, pursuant to Government Code section 14998.8.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4317. Curfew.

(a) The Department may from time to time by order declare curfew for juveniles in any unit or portion thereof upon a finding that conditions therein are such as to warrant special measures for the protection of juveniles and others and for the safety and welfare of the general public.

(b) Such curfew order shall specify the hours thereof and the period therefor and shall be posted.

(c) When curfew has been so ordered, no juvenile so prohibited shall during the effective period enter or remain therein, except as follows:

(1) One who is accompanied by a parent or guardian.

(2) One who is part of a group permitted to occupy a unit or portion thereof and who is supervised by at least one responsible adult for each fifteen juveniles.

(3) One who is lawfully camping, having furnished to the Department written consent of and the full name, residence number, and telephone number of the juvenile's parent or guardian, with the inclusive dates for which permission is granted to camp at the unit involved.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4318. Peeping Toms.

No person shall loiter, prowl or wander about a park restroom, shower or changing facility and peek into the doors and windows or other openings of such facilities when occupied, without visible or lawful business with the occupants thereof.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4319. Games and Recreational Activities.

No person shall engage in games or recreational activities that endanger the safety of persons, property, resources, or interfere with visitor activities except as permitted by the Department. No person shall hold, sponsor, lead, or otherwise have control over a game or recreational activity occurring wholly or partially within or on any property owned, operated or administered by the Department without an approved Special Event permit if any of the criteria set forth in section 4301(j) apply.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4320. Peace and Quiet.

To insure peace and adequate rest for visitors:

(a) No person shall disturb others in sleeping quarters or in campgrounds between the hours of 10 p.m. and 6 a.m. daily.

(b) No person shall, at any time, use outside machinery or electronic equipment including electrical speakers, radios, phonographs, televisions, or other devices, at a volume which is, or is likely to be, disturbing to others without specific permission of the Department.

(c) No person shall operate an engine driven electric generator which emits sound which is, or is likely to be, disturbing to others between the hours of 8 p.m. and 10 a.m. without permission of the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4321. Assembly.

No person shall conduct or attend an assembly or public demonstration except by permission of the Department upon a finding that such activity would not substantially interfere with park use.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4322. Nudity.

No person shall appear nude while in any unit except in authorized areas set aside for that purpose by the Department. The word nude as used herein means unclothed or in such a state of undress as to expose any part or portion of the pubic or anal region or genitalia of any person or any portion of the breast at or below the areola thereof of any female person.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4323. Equipment and Occupancy.

(a) Arrangement and Numbers. The Department may specify the size, type, arrangement and use of recreational equipment and the number of persons permitted in any unit or portion thereof. No person shall otherwise introduce, keep, use, or arrange his/her equipment. No person shall otherwise exceed established occupancy limitations.

(b) Food Storage. In units or portions thereof where posted in accordance with Section 4301(i), no person shall store food, lawfully taken fish or wildlife, garbage or equipment with food residue, other than in the sealed compartment of a vehicle incapable of being opened by wild animals, in a food storage unit designated by the Department, in accordance with posted instructions, or, in areas where bears are a problem, suspended at least ten (10) feet above any material that would support the weight of a bear and separated horizontally by at least four (4) feet from any post, tree trunk or other object. This restriction does not apply to food that is actively being carried, consumed or prepared for human consumption or pets.

(c) No person shall erect, maintain, use, or occupy any temporary tent or shelter on any beach unless there is an unobstructed view through such tent or shelter from at least two sides, provided, however, that nothing herein contained shall be construed to authorize camping except as provided in Section 4451 hereof.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section filed 8–29–91 as an emergency; operative 8–29–91 (Register 91, No. 51). A Certificate of Compliance must be transmitted to OAL 12–27–91 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of law and new section filed 2–5–92; operative 2–5–92 (Register 92, No. 12).
4. Change without regulatory effect renumbering former section 4663 to new subsection 4323(c) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4324. Sanitation.

(a) No person shall deposit waste, water, sewage or effluent from sinks, portable toilets, and other plumbing fixtures directly upon or into the surface of the ground or water.

(b) No person shall deposit any body waste in or any portion of any comfort station or other structure except into fixtures provided for that purpose.

(c) No person shall place any bottle, can, cloth, rag, metal, wood, paper, or stone substances in any plumbing fixture in such a manner as would interfere with the normal operation of such fixture.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Repealer and new section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect repealing subsections (d)–(e) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4325. Prohibited Area.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4326. Violation of Posted Orders or Special Use, Special Event, Film or Collection Permit.

No person shall

(a) violate any provision of an order posted pursuant to the provisions of section 4301(i) hereof including, but not limited to, prohibited areas, use periods, no alcoholic beverage areas, no smoking areas and no parking areas, where posted in accordance with 4301(q), or,

(b) violate any provision or restriction of a Special Use, Special Event, Film or Collection permit issued pursuant to these regulations.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4327. Use Periods.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4328. Alcoholic Beverages.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4329. Smoking.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4330. Pesticides.

(a) No person shall disperse or otherwise apply any pesticide within any unit or portion thereof, whether to the air, water, ground, or vegetation, unless prior written approval has been obtained from the Department.

(b) Exception is made in the instance of dispersal within enclosed buildings, tents, tent trailers, or within any vehicle or boat containing living or sleeping quarters, or the use outdoors within ten (10) feet of the table, stove, tent or food lockers, of hand–held finger–operated aerosol dispensers or hand–operated plunger–type dispensers with net contents not to exceed twenty (20) ounces and containing any of the following pesticides: Pyrethrine, Allethrin, Piperonyl butoxide, Malathion, DDVP (Dichlorves Vapona), Dibrom, Rotenone (Derrin, Cube Root).

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and repealing last paragraph filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4331. Soliciting.

No person shall solicit, sell, hawk, or peddle any goods, wares, merchandise, services, liquids, or edibles for human consumption or distribute circulars in any unit, except as permitted by the Department. Such prohibition shall include sales activities that utilize park property or facilities to complete the terms of sale or provide a service as a result of the sale or that effect park operations, facility use or visitor safety. Also included are sales activities which encroach on the sales rights of a vendor authorized to sell such products, or services pursuant to a concession contract with the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Fresno Superior Court No. 348560–6; Sections 5001.65, 5008(a), 5019.10 and 5019.53, Public Resources Code.

HISTORY

1. Amendment filed 6–17–83 as an emergency; designated effective 6–30–83 (Register 83, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–28–83.
2. Editorial correction filed 7–7–83 (Register 83, No. 28).
3. Reinstatement of section as it existed prior to emergency amendment filed 6–17–83 by operation of Government Code section 11346.1(f) (Register 84, No. 49).
4. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
5. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4332. Preparation of General Plan.

After classification or reclassification of a unit, the Department shall obtain public comment and prepare a general plan. The general plan shall consist of a resource element, a land use element, a facilities element, and an operations element. In order that it shall act as a guide and constraint, the resource element will be prepared, made available for public comment, and approved by the Director before substantial work is done on the other elements of the plan.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5002.2, Public Resources Code.

HISTORY

1. New section filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4333. Glass Containers.

No person shall possess or use a glass container, bottle, jar, tumbler, or vessel of whatever nature, empty or not, where prohibited by order of the Department, except that persons may pick up glass containers left or discarded by others and remove or deposit same in an approved trash receptacle. Signs shall be posted at beaches and locations where glass containers are prohibited.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5008 and 5008.7, Public Resources Code.

HISTORY

1. New section filed 12–4–86; effective thirtieth day thereafter (Register 86, No. 49).

Chapter 2. Vehicles, Boats, Aircraft, Horses, and Operator Propelled Devices

§ 4350. Reference to Vehicle Code.

The provisions of the Vehicle Code relating to traffic upon highways shall be applicable to Departmental units except as provided by Departmental regulations in Title 14 herein, and such regulations contain the special conditions referred to in Section 21113 of the Vehicle Code.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 21113, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4351. State Wilderness or Natural Preserve.

No person shall drive, operate, leave, place, land, taxi, takeoff or stop a motor vehicle, motorboat or aircraft within the boundaries of a state wilderness or natural preserve.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.8, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4352. Off–Highway Vehicles Hovercraft and Snowmobiles.

No person shall operate an off–highway vehicle, hovercraft or snowmobile except in designated units or portions thereof.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.8, Public Resources Code and Section 23128, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4353. Speed Limits.

(a) In no event shall a vehicle be driven at a speed greater than 15 miles per hour in camps, picnic areas, utility areas, or headquarters areas or in areas where the general public assembles;

(b) In all other areas the Department, based on the results of a traffic and engineering survey as defined in Section 627 of the California Vehicle Code may, by order, determine a speed limit, which shall be effective when appropriate signs are placed in accordance with Section 4301(q). All speed limit signs that are placed in accordance with Section 21401 of the California Vehicle Code in place on January 1, 1980, are hereby ratified and confirmed, until changed pursuant to engineering and traffic surveys;

(c) In newly acquired or developed areas, the Department may establish a speed limit which will be in effect for a period not exceeding 120 days.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 21113 and 22350, Vehicle Code; Section 5001.8, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4354. Dangerous Vehicle Operation.

No person shall operate any vehicle, motor vehicle, off–highway vehicle, or bicycle negligently or willfully in such a manner as to pursue, harass, endanger, or injure any person or animal.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section heading filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4355. Vehicle Operation.

No person shall operate, drive, use, leave, park, place or stop a vehicle, except on a road or a parking area in any unit or a portion thereof,

(a) or in violation of the condition, limitations, or restrictions in such unit or portion thereof;

(b) or in violation of any regulation contained herein.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.8, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4356. Removal of Vehicles and Vessels.

Any peace officer having jurisdiction in any unit is authorized to cause the removal of a vehicle from a unit under the provisions of the Vehicle Code including, but not limited to, Section 22659, when such vehicle is parked or left standing in violation of the Vehicle Code or state park regulation contained in Title 14 herein, or has been left standing for 72 hours.

(b) Any peace officer having jurisdiction or any property owned, operated or administered by the Department is authorized to cause the removal of a vessel from such property under the provisions of the Harbors and Navigation Code including, but not limited to, section 675(a)(1) when such vessel is left in violation of the Harbors and Navigation Code or title 14, division 3, chapter 2 of the California Code of Regulations.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code; Section 22659, Vehicle Code; Section 675(a)(1), Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a) and new subsection (b) filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4357. Vehicle Operators.

(a) All individuals operating vehicles in any units shall be properly licensed.

(b) The Department may authorize certain types of vehicles to be operated in units or portions thereof by other than licensed operators.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 12501, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and amending subsection (a) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4358. Parking.

The Department may, by posting of notices (4301(i) and (q)), prohibit or restrict the parking or standing of vehicles in units or portions thereof, during all or certain hours of the day. No such posting of notices shall apply until signs or markings giving adequate notice thereof have been placed.

No person shall block or prevent access to a parking space that they do not lawfully occupy by the parking, standing, or stopping of a vehicle or placement of other objects, or any person. A person may lawfully occupy a parking place only through payment of fees or by being on Department business.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.8 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
4. Change without regulatory effect repealing first sentence of each paragraph filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4359. Riding or Pack Animals.

(a) No person shall ride, drive, lead, or keep a saddle or pack animal in a unit, or portion thereof, except on such roads, beaches, trails, or areas so designated by the Department.

(b) No saddle or pack animal shall be hitched to any tree, shrub, or structure in any manner that might cause damage thereto.

(c) No person shall ride any animal in a manner that might endanger life or limb of any animal, person or property;

(d) No person shall allow their animal to stand unattended or insecurely tied.

(e) All persons opening a closed gate shall close the same after passing through it.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect amending section heading and section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4360. Bicycles, Operator Propelled Devices.

No person shall operate an operator or gravity propelled device in any unit, or portion thereof, when the Department has issued an order prohibiting such activity. The Department may establish speed limits for units or portions thereof in which these devices are used. Speed limits will be posted.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4361. Aircraft.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.7, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Repealer filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

Chapter 3. Concessions

§ 4400. Procedure, Concessions.

Within ten (10) days after the Department of Parks and Recreation has issued a notice of intent to award a concession contract for a term in excess of two (2) years following a request for proposal or invitation to bid, any proposer/bidder may file a written statement of protest against awarding of the contract with the Director of the Department. The statement shall be signed by the protestor, shall specify the grounds for the protest and may include a demand for a hearing. A copy of the protest must be served on the Attorney General within the same ten–day period by the proposer/bidder.

If a protest is timely served and a hearing is demanded, or if the Director on his or her own motion orders a hearing, proceedings shall be conducted according to the Administrative Procedure Act, and the protest statement shall be treated as a statement of issues. Any recommendation or decision of the hearing officer shall be submitted to the Director for approval, adoption, modification, disapproval or other interlocutory or final action.

If a hearing is not so demanded or ordered, the action of the Director shall be final.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5080.03, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section and NOTE filed 10–16–2003; operative 11–15–2003 (Register 2003, No. 42).

Chapter 4. Camping

§ 4450. Sections Applicable Only to State Operated Units.

All sections in Chapter 4 shall apply only to units operated by the Department of Parks and Recreation.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.10, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4451. Camping.

(a) No person shall camp, as defined in Section 4301(U), in any unit except in areas designated for that purpose.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4452. Number Occupying Campsites.

(a) The number of vehicles and persons occupying a campsite shall not exceed two vehicles and eight persons;

(b) the Department may authorize a greater or lesser number when facilities so warrant.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and amending subsection (b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4453. Camping Fees Due.

(a) Fees for the use of camping facilities are due and payable daily.

(b) The fee covers use of camping facilities until the vacating time of 12:00 noon, of the following day.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5010, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect adding subsection (a) and (b) designators and amending subsection (b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4454. Occupancy.

(a) A campsite is considered occupied when it is being used or has been reserved and the campsite is officially posted or marked "occupied" either at the campsite or entrance station.

(b) The person or persons by or for whom the daily use fee has been paid and the guests and invitees of such person or persons may occupy the campsite.

(c) No person not authorized to occupy a campsite pursuant to subparagraph (a) and (b) of this section or pursuant to law, shall take or maintain possession or arrange camping equipment or park or stand a vehicle in a campsite marked occupied.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4455. Camping Time Limits.

(a) General. Occupancy by the same persons, equipment, or vehicles of any camping facility is limited to a total of 30 days in any calendar year in that unit. The Department may establish shorter or longer limits of occupancy.

(b) Shorter Limits. When the department has established shorter seasonal limits, no person (or persons) who have occupied a campsite for the established limit may reregister in the unit until the expiration of forty-eight (48) hours, from 12:00 noon of the checkout day to 12:00 noon of the second day following. Upon expiration of the established limit, the registered camper shall vacate the campsite of all persons, vehicles and equipment.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment of subsection (b) filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4456. Vacating.

Occupants shall vacate the campsite by removing their person, vehicles and property therefrom prior to 12:00 noon if applicable use fee has not been paid or if time limit for occupancy has expired.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4457. One–Night Camping in Day Use Areas.

The district superintendent may permit camping for one night only in a day use area or a portion thereof. Persons occupying a site for such camping shall vacate the same by 9 a.m. the following morning, shall be subject to such fees and vehicle limitations as the Department may establish, and shall be limited to the use of only such portions of the unit as the Department shall specify.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4458. Nighttime Closure.

No person shall be present in any campground between the hours of 10 p.m. and 6 a.m. except as the lawfully registered occupant or for the lawful purpose of camping when campsites are available.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4460. Parking for Overnight Camping in Designated Coastal Beach Parking Areas.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.6, Public Resources Code.

HISTORY

1. New section filed 7–19–77 as an emergency; effective upon filing (Register 77, No. 30).
2. New section refiled 1–4–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 10).

§ 4461. Coastal Beach Overnight Parking Areas.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.6, Public Resources Code.

HISTORY

1. New section filed 7–19–77 as an emergency; effective upon filing (Register 77, No. 30).
2. New section refiled 1–4–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 10).

§ 4462. Definitions.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.6, Public Resources Code.

HISTORY

1. New section filed 7–19–77 as an emergency; effective upon filing (Register 77, No. 30).
2. New section refiled 1–4–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 10).

§ 4463. Annual Permit Fee and Inspection.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.6, Public Resources Code.

HISTORY
1. New section filed 7–19–77 as an emergency; effective upon filing (Register 77, No. 30).
2. New section refiled 1–4–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 10).

§ 4464. Self–Contained Vehicle Camping.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008.6, Public Resources Code.

HISTORY
1. New section filed 7–19–77 as an emergency; effective upon filing (Register 77, No. 30).
2. New section refiled 1–4–78 as an emergency; effective upon filing (Register 78, No. 1).
3. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 10).

Chapter 5. Hunting

§ 4500. Areas Open to Hunting, General Provisions.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003.1 and 5019.56, Public Resources Code.

HISTORY
1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4501. Hunting Authorized.

Hunting is authorized as follows:

(a) Picacho State Recreation Area.

There is opened to hunting annually from the opening day of dove hunting season through the closing day of duck or goose hunting season, whichever is later, as established by the State Fish and Game Commission, all lands except those portions described as follows:

(1) That portion of Section 24, Township 13 South, Range 22 East, S.B.B.&M., lying east of the western line of Lot 2.

(2) The northeast quarter of the northwest quarter; the north half of the southeast quarter of the northwest quarter; the northwest quarter of the northeast quarter; the west half of the northeast quarter of the northeast quarter; the northeast quarter of the northeast quarter of the northeast quarter; the north half of the southwest quarter of the northeast quarter; and the northwest quarter of the southeast quarter of the northeast quarter of Section 25, Township 13 South, Range 22 East, S.B.B.&M.

(3) That portion of Section 19, Township 13 South, Range 23 East, S.B.B.&M., which lies west of the western line of Colorado Street as said street is shown on the map of the Town of Picacho filed April 24, 1897, in Book 1 of Maps, Page 2, Official Records of San Diego County.

At all other times than from the opening day of the dove hunting season through the closing day of duck or goose hunting season, as established by the State Fish and Game Commission, the area shall be closed to hunting to accommodate visitors and insure their safety. (See 14 ADM C. 501, and 502(a) (1).)

A map of the portions of the state recreation area opened to hunting shall be available at the state recreation area office for examination.

(b) Hunting. Auburn State Recreation Area.

Hunting is allowed with the following restrictions.

Location: No hunting is allowed at the following locations:

(1) All lands west of Highway 49.

(2) The main body of Lake Clementine and adjacent lands within 150 yards of the lake, and within 150 yards of any access road, building, campground, or marina.

(3) The Middle Fork of the American River and adjacent lands from the Highway 49 bridge upstream (east) to the upper end (inclusive) of the area known as Mammoth Bar.

(4) The North Fork of the American River and adjacent lands from the Highway 49 bridge upstream to Clementine Dam.

(5) All lands west of the intersection of the old and the new Auburn Foresthill roads.

(6) All areas leased for grazing.

Season: Hunting is only allowed during the regular hunting season established by the Fish and Game Commission between September 1 and January 31.

Species: Deer, California Quail, dove and Bandtail Pigeon and turkey.

Method: Only shotguns, rifles and bows and arrows may be used and only in compliance with all Fish & Game Commission Regulations.

A map of the portions of the state recreation area open to hunting shall be available at the state recreation area office for examination.

(c) Hunting, San Luis Reservoir State Recreation Area.

There is opened to hunting annually from the opening day of hunting season for ducks or geese, whichever is earlier, to and including the closing day of said season, whichever is later, as established by the State Fish and Game Commission all lands except those portions described as follows:

(1) In San Luis Reservoir:

(a) San Luis Dam structure.

(b) San Luis trash rack structure.

(c) That portion of land lying between the basalt access road and the San Luis Reservoir water line, from the south end of the dam to and including the basalt boat ramp.

(2) In O'Neill Forebay:

(a) California aqueduct structure from where it enters O'Neill Forebay to the Recreation Area boundary.

(b) O'Neill pumping plant structure.

(c) O'Neill dam structure.

(d) California aqueduct outlet from its mouth to the Recreation Area boundary.

(e) All the land in the Mederios area bounded b O'Neill Forebay and Highways 207 and 152.

(f) All land in the San Luis Creek area from a point on the waterline, 7,500 feet south of the north boundary of the Recreation Area: thence west to the west fence and projection of the fence line to O'Neill Forebay: thence easterly and northerly along the waterline to the point of beginning.

(3) In Los Banos Creek Reservoir area.

(a) Los Banos Dam structure and Vista Point.

(b) The two campground areas and the posted adjacent shoreline on the north side of the reservoir.

(4) In all areas for a distance of 300 feet beyond each and all of the above specifically described areas, but not extending beyond the State Recreation Area boundary.

At all other times than from the opening day of such duck or goose hunting seasons, whichever is earlier, to and including the closing day of said hunting season, whichever is later as established by the State Fish and Game Commission, the area shall be closed to hunting to accommodate visitors and ensure their safety. (See 14 Cal. Adm. Code Section 502(a)(1).)

A map of the portions of the state recreation area open to hunting shall be available at the State Recreation Area Office for examination.

(d) Hunting. Providence Mountains State Recreational Area.

There is opened to hunting within that portion described as follows:

That parcel of land located in Township 10 North, Range 14 East, of the San Bernardino Base Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at the center west sixteenth corner in Section 8, thence in a southerly direction along the section line in Sections 8 and 17, thence to the center west sixteenth corner in Section 17, thence easterly along the quarter section line to the quarter corner common to Sections 16 and Section 17, thence northerly along the section line to the section corner common to Sections 8, 9, 16 and 17, thence easterly along the section line to the east–west sixty fourth center common to Sections 9 and 16, thence northerly along the sixty fourth section line 800 feet to a point, thence east

2,000 feet more or less to a road commonly known as the Old C and K Mine Road, thence in a generally easterly and southerly direction along said road 9,000 feet more or less to a fork in the road, thence along the southerly fork 600 feet more or less to the section line common to Sections 14 and 15, thence southerly along the section line approximately 1.7 miles to the quarter corner common to Sections 26 and 27, thence easterly in Section 26 along the quarter section line to the center–east sixteenth corner in Section 26, thence northerly along the sixteenth section line 2.5 miles more or less to the east sixteenth corner common to Sections 11 and 14, thence westerly 1.25 miles to the quarter corner common to Sections 10 and 15, thence northerly along the quarter section line to the center quarter corner of section 10, thence westerly approximately 2.5 miles along the quarter section line in Sections 10, 9, and 8, thence to the center–west sixteenth corner in Section 8, being the point of beginning of said parcel.

Excepting therefrom all lands that are not under the control of the Department.

(e) Hunting. Lake Oroville State Recreation Area.

There is opened to hunting annually, between September 15 and January 31 only, during the regular hunting season, and during the spring turkey hunting season, as established by the State Fish and Game Commission, all lands except those portions described as follows:

(1) West branch of the lake and adjacent lands upstream from the Highway 70 bridge.

(2) The main body of the lake downstream from Foreman Point and downstream from the Bidwell Bar bridge.

(3) Those areas known as Goat Ranch, Bloomer Primitive, Foreman Creek, Sycamore Creek and Craig Boat–in Campground.

(4) Thermalito Forebay north and south and adjacent state recreation area lands.

(5) Thermalito diversion reservoir and adjacent state recreation area lands.

(6) Hunting will be prohibited within 300 yards of any designated campground, building or dock.

Except during turkey hunting season in the spring, no hunting will be allowed during the period between February 1 through September 14, to accommodate other visitors and ensure their safety. (See Title 14 Cal. Adm. Code Section 502(a)(1).)

A map of the portions of the state recreation area open to hunting shall be available at the state recreation area office for examination.

(f) Hunting. Lake Perris State Recreation Area.

There is opened to hunting annually during the regular seasons established by the State Fish and Game Commission, during the period September 1 through January 31, and with shotguns only, within those portions bounded by the Bernasconi Pass Road and a posted boundary to the lake shore; the lake shoreline northerly to a posted boundary to the Davis Road; the Davis Road easterly to the state recreation area boundary; and the state recreation area boundary southerly and westerly to the point of beginning at the Bernasconi Pass Road.

That portion of the lake area posted with buoys to approximately 1556 contour line from the first ridge and the lake shoreline northerly of the Bernasconi Pass Road, northerly to an outcropping of rocks and posted with buoys on the east shoreline located approximately on a bearing of north 70 degrees east from the top of Alessandro Island.

A map of the portions of the state recreation area open to hunting shall be available at the state recreation area office for examination.

(g) Hunting. Harry A. Merlo State Recreation Area.

There is opened to hunting annually during the regular waterfowl hunting season, as established by the State Fish and Game Commission, all lands in the Harry A. Merlo State Recreation Area at or below the 20 foot elevation contour. Possession of a loaded firearm will be illegal within the unit at all elevations above 20 feet at all times.

A map of the portions of the state recreation area open to hunting shall be available at the state recreation area office for examination.

(h) Hunting. Franks Tract State Recreation Area.

There is opened to waterfowl hunting annually from the opening day of hunting season for ducks and geese, whichever is earlier, to and including the closing day of this season, whichever is later as established by the Fish and Game Commission, in all of Franks Tract State Recreation Area, except the 330 acre island known as Little Franks Tract, which is bounded on the south and west by Piper Slough, on the North by False River, and on the east by the open water portion of Franks Tract State Recreation Area; also excepting that portion of Franks Tract State Recreation Area lying southwest of the following line: beginning at a point on Little Franks Tract, 2,000 feet north of Piper Slough, thence southeast 2,000 feet east of Piper Slough levee to the junction of Holland Island levee.

A map of the portions of Franks Tract State Recreation Area open to hunting shall be available at the Delta District office at Brannan Island State Recreation Area for examination.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003.1, 5017, 5019.5 and 5019.56, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section heading and section, adding new subsection (a) and renumbering former sections 4503–4509 to new subsections 4501(b)–(h) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4502. Prohibition of Taking Game Not Regulated or Protected by Statute Where Hunting Is Permitted.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5001.65, 5003 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4503. Hunting. Auburn State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
3. Change without regulatory effect renumbering former section 4503 to new subsection 4501(b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4504. Hunting, San Luis Reservoir State Recreation Area.

NOTE: Authority cited: Section 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect renumbering former section 4504 to new subsection 4501(c) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4505. Hunting, Providence Mountains State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4505 to new subsection 4501(d) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4506. Hunting, Lake Oroville State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).

2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect renumbering former section 4506 to new subsection 4501(e) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4507. Hunting, Lake Perris State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4507 to new subsection 4501(f) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4508. Hunting, Harry A. Merlo State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4508 to new subsection 4501(g) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4509. Hunting, Franks Tract State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5003.1, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4509 to new subsection 4501(h) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

Chapter 6. Provisions Limited to Specific Units

§ 4600. Hearst San Simeon State Historical Monument.

(a) Tours.

All visitors shall remain with the designated guide; and no person shall depart from the route of tour as designated by the guide, or stray without permission of such guide or his/her superiors into areas prohibited to visitors and so marked.

(b) Handling Objects.

No person other than officers or employees of the Department in the course of duty shall touch, handle, or move any object or exhibit.

(c) Food and Beverages.

No person shall possess, carry, or consume food or beverages on the route of tour or in any vehicle on such route.

(d) Photographs and Cameras.

No photography is to interfere with scheduled tours, and the time limits allotted them. No photographer is to leave the tour route, use any kind of artificial light, tripod, or set any equipment down on any surface without permission from the Department.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003, 5008 and 5019.59, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section and renumbering former sections 4600.1–4600.3 and 4600.6 to new subsections (a)–(d), respectively, with amendments thereto, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.1. Tours.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4600.1 to new 4600(a), with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.2. Handling Objects.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4600.2 to new 4600(b), with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.3. Food and Beverages.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4600.3 to new 4600(c) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.4. Smoking.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.5. Dogs or Pets.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4600.6. Photographs and Cameras.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4600.6 to new 4600(d), with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4601. Torrey Pines and Point Lobos State Reserves, and Penasquitos Marsh Natural Preserve.

All sections shall apply to all upland areas of Torrey Pines State Reserve which areas are defined as all portions of the reserve lying on the southwest and northeast sides of Soledad Valley above the 20 foot elevation contour, and to all of the Penasquitos Marsh Natural Preserve.

No person shall:

(a) Picnic anywhere in the reserve except where designated by the District Superintendent.

(b) Leave designated trails that are so posted.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section heading and section, and adding text from former section 4601.1 filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4601.1. Torrey Pines State Reserve.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Change without regulatory effect moving portions of section to section 4601 and repealing remainder of section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4601.2. Penasquitos Marsh Natural Preserve.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5008 and 5019.71, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4602. Point Lobos State Reserve.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4603. Angel Island State Park.

(a) No person shall land a ship or boat on said park other than at a dock or place designated by the District Superintendent. No person shall so land when such dock or place is occupied, or when the District Superintendent forbids landing because he/she has determined that the facilities of the unit are full, or after local closing hours. No person shall enter said unit other than by ship or boat, or by swimming ashore, or from a ship or boat lying offshore.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending subsection (a) and repealing subsection (b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4604. Carrizo Impact Area.

The Carrizo Impact Area is hereby closed to the general public pending the accomplishment of decontamination procedures. The Carrizo Impact Area herein referred to is all that real property in the County of Imperial, State of California, more particularly described as follows:

The south half and south half of the north half of Sections 8, 9, and 10; and all of Sections 15, 17, 20, to 29 inclusive and 32, 33, 34, and 35, Township 14 South, Range 9 East, S.B.B.&M. and Sections 1, 2, 3, 4, 5, 6, 10 to 15 inclusive, the east half and all of lots 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 30, 31 and 32 of Section 7 and east half and Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of Section 18, east half and east half of west half and Lots 1, 2, 3, 4, in Section 16; north half, north half of south half, southeast quarter of southwest quarter, south half of southeast quarter, and Lot 1 of Section 9; Lots 1, 2, 3, 4, 5, 6, and 7 of Section 17, Township 15 South, Range 9 East, S.B.B.&M.

Said area is further described and delineated on that map entitled "Carrizo Closure Map" filed in the director's office and posted in the office of the District Superintendent of Anza–Borrego Desert State Park.

No person shall during the effective period of this regulation enter the Carrizo Impact Area; provided, however, that personnel of the armed forces of the United States may enter for the purposes of decontamination and ordnance disposal; provided, further, that public officers of the United States, of the state, and of other public agencies and their employees, contractors, and agents, may enter for a public purpose only on prior permission in writing by the district superintendent on such terms and conditions as may be prescribed; and provided, further, that nothing herein contained shall be construed in derogation of any right therein heretofore by instrument duly granted.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 506, 546, 5003 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605. Lake Elsinore State Recreation Area.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.56, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.1. Lake Elsinore State Recreation Area.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5008 and 5019.56, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.2. Construction.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5008 and 5019.10, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.3. Traffic Patterns.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.4. Ski Tow Rope.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.5. Towed Equipment.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4605.6. Sailboats.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4606. Lake Natoma. Folsom Lake State Recreation Area.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 506, 546, 5003 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4607. Benbow Lake State Recreation Area.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4608. Mt. San Jacinto State Wilderness.

(a) At no time shall the number of persons camping in the state wilderness exceed 400.

(b) No person shall enter Mt. San Jacinto State Wilderness without first obtaining the required permit.

NOTE: Authority cited: Sections 5003 and 5008, Public Resources Code. Reference: Sections 5001.5, 5003, 5008, 5017 and 5019.5, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4609. Pismo Dunes State Vehicular Recreation Area.

(a) Unless provided for in these provisions, all of the provisions of the California Vehicle Code apply to Pismo Dunes State Vehicular Recreation Area, CVC21113.

(b) Vehicles.

All vehicles shall be registered under the provisions of the California Vehicle Code, Sections 4000 or 38010 and may operate as follows:

(1) The boundaries of such vehicle use shall be designated by the District Superintendent as shown on a map posted at the unit.

(2) The towing by a vehicle of any object other than another vehicle or trailer is prohibited.

(3) All Off–Highway vehicles registered under California Vehicle Code Section 38010 or other vehicles primarily operated for Off–Highway Vehicle activities shall be equipped with a whip, which is any pole, rod or antenna, that is securely mounted on the vehicle and which extends at least eight (8) feet from the surface of the ground when the vehicle is stopped.

When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags.

At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches and be attached within ten (10) inches of the top of the whip. Flags may be of pennant, triangle, square, or rectangular shape. Club or other flags may be mounted below the safety flag or on a second whip.

(4) When a vehicle is operated in the dunes area, which is that land area extending from the first line of sand dunes inland outside Pismo Dunes Natural Preserve, the vehicle shall have additional equipment as follows:

Each vehicle, except two, three and four wheeled cycles, shall be equipped with adequate roll bars or roof structure of sufficient strength to support the weight of the vehicle and shall have a secure seat and seat belt for the vehicle operator and each passenger. Seat belts shall be as specified in the California Vehicle Code.

NOTE: Authority cited: Section 5003 and 5008, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code; and Sections 4000, 21113 and 38010, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing first sentence, adding subsection (a) designator, and renumbering former section 4609.1 to new subsections (b)–(b)(4), with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4609.1. Vehicles.

NOTE: Authority cited: Sections 5003 and 5088, Public Resources Code. Reference: Sections 5001.65, 5001.8, 5003 and 5008, Public Resources Code; and Section 21113, Vehicle Code.

HISTORY

1. Repealer of subsection (d) filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect renumbering former section 4609.1 to new subsections 4609(b)–(b)(4). with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4609.2. Drivers' Licenses.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 12501, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4609.3. Drivers' Licenses, Off–Highway Units.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference:Section 12501, Vehicle Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4609.3 to new section 4610 filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610. Drivers' Licenses, Off–Highway Units.

Unlicensed drivers may operate a vehicle in off–highway division units as follows:

(a) The unlicensed driver shall be accompanied and supervised at all times by a licensed driver who must be in, on, or about the vehicle being operated. The licensed driver supervising shall supervise not more than three (3) unlicensed drivers at any one time.

(b) The unlicensed driver must be capable of operating all vehicle control mechanisms and is prohibited from operating a vehicle during night–time hours or outside the designated off–highway vehicle area.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference:Section 12501, Vehicle Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4610 to new section 4611 and renumbering former section 4609.3 to new section 4610 filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.1. Units Open for Rockhounding.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.65 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
4. Change without regulatory effect renumbering sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.2. Commercial Use.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.65, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.3. Maximum Take.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5001.65, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.4. Disturbing Land.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.5. Use of Tools.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.6. "Float" Materials.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.7. Areas for Swimming and Boating.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.8. Areas Limited for Collecting.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.9. Indian Artifacts.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4610.10. Panning for Gold.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former sections 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (b)–(i), respectively, with amendments filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4611. Rockhounding.

(a) Rockhounding is authorized by Section 5001.65 of the Public Resources Code.

(b) Units and portions thereof (o)pen for Rockhounding will be posted in accordance with Section 4301(i).

(c) Commercial Use.

Rocks or mineral specimens gathered within a unit may not be sold or used commercially for the production of profit.

(d) Maximum Take.

One person may gather, in one day in one unit, not more than 15 pounds of mineralogical material or not more than one specimen plus 15 pounds of mineralogical material.

(e) Use of Tools.

Tools, except goldpans to be used in gold panning, may not be used in rockhounding within a unit.

(f) Areas for Swimming and Boating.

In state recreation areas rockhounding may not be practiced in areas designated for swimming or for boat launching.

(g) Areas Limited for Collecting.

In state recreation areas rockhounding is limited to beaches which lie within the jurisdiction of the Department and within the wave action zone on lakes, bays, reservoirs, or on the ocean, and to the beaches or gravel bars which are subject to annual flooding on streams.

(h) Indian Artifacts.

Rockhounding in a unit specifically does not include the gathering of Indian arrowheads, Indian stone tools, or other archeological specimens, even when such specimens may be found occurring naturally on the surface.

(i) Panning for Gold.

Panning for gold is considered to be "rockhounding" as the term is applied in the Department. The goldpan is the only exception permitted to the exclusion of tools from rockhounding in a unit as provided in Section 4610.5. Muddy water from panning operations must not be visible more than 20 feet from the panning operation.

NOTE: Authority cited: Sections 5001.65 and 5003, Public Resources Code. Reference: Section 5001.65, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing section and renumbering sections 4610, 4610.1, 4610.2, 4610.3, 4610.5, 4610.7, 4610.8, 4610.9 and 4610.10 to new section 4611, subsections (a)–(i), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4612. Crystal Cove Historic District.

No person shall repair, alter, modify, add to, or reduce any structure within the "Historic District" of Crystal Cove State Park without first obtaining a permit from the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New section filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4613. California State Railroad Museum.

The California State Railroad Museum, for the purposes of this section, includes the Museum of Railroad History Building, the Big Four Building, the Central Pacific Passenger Station, Central Pacific Freight Depot, and the train equipment operated by the Museum.

(a) Carrying Capacity.

Except as authorized by the Department, no person or groups shall enter a Museum facility when notified by staff or posted at the museum en-

trances that the facility is currently occupied by the number of persons or groups established as the appropriate carrying capacity.

(b) Photography.

No person shall use photographic equipment or techniques when informed by staff or posted notice that their use is prohibited.

(c) Artifacts and Exhibits.

Except as authorized by the Department, no person shall touch, handle or move any artifact, museum object or exhibit.

(d) Climbing.

Except as authorized by the Department, no person shall climb on any object or exhibit.

(e) Food and Drink.

Except as authorized by the Department, no person shall possess, carry or consume food or beverage within any facility, building or equipment.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect repealing first sentence and second paragraph, and renumbering former sections 4613.1–4613.5 to new subsections (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.1. Carrying Capacity.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect renumbering former sections 4613.1–4613.5 to new subsections 4613 (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.2. Photography.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect renumbering former sections 4613.1–4613.5 to new subsections 4613 (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.3. Artifacts and Exhibits.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect renumbering former sections 4613.1–4613.5 to new subsections 4613 (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.4. Climbing.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect renumbering former sections 4613.1–4613.5 to new subsections 4613 (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.5. Food and Drink.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect renumbering former sections 4613.1–4613.5 to new subsections 4613 (a)–(e), respectively, with amendments, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4613.6. Dogs and Pets.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5003 and 5008, Public Resources Code.

HISTORY

1. New section filed 6–5–91; operative 7–5–91 (Register 91, No. 35).
2. Change without regulatory effect repealing section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

Chapter 7. Aquatic and Boating

§ 4650. Swimming.

No person shall swim in areas prohibited for swimming. Such areas shall be designated by the posting of notices.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4651. Swimming Areas.

No person shall operate any boat or ride, pull or tow any aquaplane or water–ski or any other device within any designated swimming area or within fifty (50) feet of the existing boundary of any designated swimming area or boundaries which are marked by buoys placed fifty (50) feet apart and the area posted on shore by signs.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4652. Floating Devices.

No person shall use, operate, or bring into an open zone, floating devices such as rubber crafts, surfboards, surfmats, buoys, kites, experimental crafts, or any other floating device other than those approved boats, aquaplanes or water–skis and related equipment. The Department may permit the use of certain unauthorized floating devices in open zones on occasions where traffic is such as to render them safe and during special events, games, tests, or experiments.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4653. False Drowning Alarm.

No person shall give or transmit a false signal or a false alarm of drowning in any manner or mode.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4654. Surf–Riding.

No person shall engage in surf–riding in an area where so prohibited and posted.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4656. Diving.

No person shall dive in any unit of the State Park System. As used in this section, dive means to plunge from any height, especially, but not limited to, head first into water.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment filed 6–5–91; operative 7–5–91 (Register 91, No. 35).

§ 4657. Launching Areas.

No person shall launch or beach a boat or weigh anchor or cast off when the Department has by posting an order prohibiting the same. Such orders shall prescribe the time and area in which effective.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4658. Boat Speed Limits.

No person shall operate a boat in a unit at speeds in excess of that posted.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4659. Operating Boats During Nighttime.

Where night boating is authorized, no person shall operate a boat at speeds in excess of five (5) nautical miles per hour.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. New NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4660. Vessels.

(a) No person shall beach, land, launch, moor, dock or berth a vessel, boat, or any other object overnight except in areas so designated and posted by the area manager.

(b) The Department may, by posting of an order, specify locations, conditions, and limitations for the beaching, landing, launching, mooring, docking, or berthing of a vessel, boat, or any other object. No such posting of notice shall apply until signs or markings giving notice thereof have been placed.

(c) Beached or abandoned vessels, boats, or any other objects are to be removed by the registered owner from Departmental property within twenty–four (24) hours of notification. The last registered owner of record is responsible and is thereby liable for the cost of removal and disposition of the vessel, boat, or other object beached or abandoned.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5005.6 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4661. Disposal of Waste from Boats.

Any boat must be so constructed or equipped that all wastes, including but not limited to shower water and human waste, are discharged into a holding tank. Such wastes shall only be discharged in onshore disposal facilities.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4662. Inspections.

(a) A State Park Peace Officer or Peace officer with concurrent jurisdiction may inspect any vessel or boat at any time for compliance with all applicable laws, rules, and/or regulations. Any person who refuses to allow such inspection shall immediately remove his/her vessel from the waters of the state park system.

(b) No boat shall remain launched or in continuous use in the state park system for more than 30 days except by concession granted.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5001.96 and 5008, Public Resources Code.

HISTORY

1. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Amendment of NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Change without regulatory effect amending subsection (a) and repealing subsection (b), with subsection relettering, filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4663. Erection of Tent.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect renumbering former section 4663 to new subsection 4323(c) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4664. Underwater Activities.

No person shall:

(a) Enter an underwater park unit or scenic or scientific reserve other than through an established water entry point.

(b) As used in this section, underwater activities shall mean engaging in activities beneath the surface of the water.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5008, 5019.50 and 5019.53, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect repealing subsections (a), (b) and (e), subsection relettering, and amendment of newly designated subsections (a) and (b) filed 6–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 25).

§ 4665. Power–Driven Vessel Operator.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Repealer of Section 4665 filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
2. Editorial correction reprinting Section 4665 heading which was inadvertently deleted in a prior register (Register 86, No. 5).

Chapter 8. Winter Sports

§ 4700. Runaway Snow Skis.

No person shall engage in downhill snow skiing in a state park without an Arlberg strap, long thong, a nylon cord, or adequate device to prevent runaway skis.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4701. Designated Winter Sports Areas.

No person shall use or operate a toboggan, sled, tow rope, snow disc, or vehicle adapted to travel in or over snow, or ski, or construct, use, or operate a ski lift or tramway or machinery incidental to any of the foregoing, except in areas as designated by the Department.

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5008, Public Resources Code.

HISTORY

1. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

Chapter 9. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 4725. Definitions.

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

(b) "Small Business" means a firm that complies with the provisions of Government Code Section 14837.

(c) "Director" means the Director of the Department of Parks and Recreation or the Director's designee authorized to act on his or her behalf.

(d) "Department" means the Department of Parks and Recreation.

(e) "Architectural, landscape architectural, engineering, environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.

(f) The terms "minority business enterprise" and "women business enterprise" shall have the respective meanings set forth in Section 10115.1 of the Public Contract Code.

(g) The term "disabled veteran business enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4726. Selection Criteria.

The Director shall utilize selection criteria for each proposed project which will comprise the basis for the selection of eligible firms to perform the required services. The criteria are to include such factors as:

(a) Professional experience of the firm in performing services of similar nature.

(b) Quality and relevance of recently completed or ongoing work.

(c) Reliability, continuity, and location of firm to the project site.

(d) Staffing capability.

(e) Education and experience of key personnel to be assigned.

(f) Knowledge of applicable regulations and technology associated with the services required.

(g) Specialized experience of the firm in the services to be performed.

(h) Participation as small business firm.

(i) Other factors the Director deems relevant to the specific task to be performed.

These factors shall be weighed by the Director according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.5, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4727. Announcement of Project.

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and in the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, at a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Department, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Director shall identify potentially qualified small business firms interested in contracting with the Department, and shall provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Director to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4728. Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Director shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in Section 4726, and rank, in order of preference, the firms determined as eligible to perform the required services.

(b) The Director shall conduct discussions with at least the three most eligible firms, or a lesser number if fewer than three eligible firms have responded, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Director shall select, in order of preference, not less than three firms, or lesser number if fewer than three eligible firms responded, deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4729. Estimate of Value of Services.

(a) Before entering into discussion with any firm selected pursuant to Section 4728, the Director shall direct the Department staff to prepare an estimate of the value of the proposed project, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of Section 4731, and shall not be disclosed until award of the contract or abandonment of the negotiation process for the services to which it relates.

(b) At any time the Director determines the Department's estimate to be unrealistic for any reason, the Director shall require the estimate to be reevaluated and, if deemed necessary, modified.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4730. Statewide Participation Goals.

In the negotiation of a satisfactory contract as provided in Section 4731, the best qualified firm must meet the statewide participation goals for disabled veteran, minority and women business enterprises of not less than 3 percent for disabled veteran business enterprises, not less than 15 percent for minority business enterprises, and not less than 5 percent for women business enterprises, or demonstrate that a good faith effort was made to meet them. The best qualified firm shall comply with the statewide participation goals as required by the regulations contained in Title 2, California Code of Regulations, Sections 1896.61–1896.67 and 1896.90–1896.96.

NOTE: Authority cited: Section 4526, Government Code; Section 10115.3, Public Contract Code; and Section 999.5, Military and Veterans Code. References: Section 4528, Government Code; Sections 10115, 10115.1, 10115.2 and 10115.3, Public Contract Code; and Sections 999, 999.1, 999.2, 999.3, 999.4 and 999.5, Military and Veterans Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4731. Negotiation.

(a) From among the firms selected in Section 4728, as most highly qualified to perform the services required, the Director shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable.

(b) If the Director is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) Where the Director is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Director shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Director shall abandon the negotiation process for the required services.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4732. Amendments.

Where the Director determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions and specifications for the services involved, with a reasonable adjustment in the firm's compensation.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4733. Contracting in Phases.

Where the Director determines it is necessary or desirable for a project to be performed in separate phases, the Director may negotiate a partial compensation for the initial phase of the services required; provided, however, the Director first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Department may, at its option, utilize the firm to perform other phases of the services at a compensation which the Department determines is fair and reasonable, to be later negotiated and included in a mutual written agreement. In the event that the Department exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter, regarding estimates of value of services and negotiation shall be followed.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4734. Director's Power to Require Bids.

If the Director determines that the services are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Chapter.

NOTE: Authority cited: Section 4526, Government Code. References: Section 4529, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4735. Unlawful Considerations.

Each contract shall include a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations either promised or paid to any Department employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contract.

NOTE: Authority cited: Section 4526, Government Code. References: Section 4526, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

§ 4736. Prohibited Relationships.

No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, 87100 and 87102, Government Code.

HISTORY

1. New section filed 3–31–92; operative 4–30–92 (Register 92, No. 15).

Chapter 10. Classification of Park Units

§ 4751. State Parks.

In the interest of the public, the following units in the State Park System are classified in the category of State Parks, as provided in Section 5019.53 of the Public Resources Code, provided, however, that there is reserved the power to repeal, amend or modify this section as may from time to time hereafter be necessary and proper:

Ahjumawi Lava Springs State Park
Andrew Molera State Park
Angel Island State Park
Annadel State Park
Anza–Borrego Desert State Park
Big Basin Redwoods State Park
Border Field State Park
Bothe–Napa Valley State Park
Burton Creek State Park
Butano State Park
Calaveras Big Trees State Park
Castle Crags State Park
Castle Rock State Park
Caswell Memorial State Park
China Camp State Park
Chino Hills State Park
Clear Lake State Park
Crystal Cove State Park
Cuyamaca Rancho State Park
D. L. Bliss State Park
Del Norte Coast Redwoods State Park
Donner Memorial State Park
Emerald Bay State Park
Forest of Nisene Marks State Park, The
Fremont Peak State Park
Gaviota State Park
Grizzly Creek Redwoods State Park
Grover Hot Springs State Park
Hendy Woods State Park
Henry Cowell Redwoods State Park
Henry W. Coe State Park
Humboldt Lagoons State Park
Humboldt Redwoods State Park
Jedediah Smith Redwoods State Park
Julia Pfeiffer Burns State Park
MacKerricher State Park
Malibu Creek State Park
McArthur–Burney Falls Memorial State Park
Mendocino Headlands State Park
Montana de Oro State Park

Morro Bay State Park
Mount Diablo State Park
Mount San Jacinto State Park
Mount Tamalpais State Park
Palomar Mountain State Park
Patrick's Point State Park
Pfeiffer Big Sur State Park
Placerita Canyon State Park
Plumas–Eureka State Park
Point Mugu State Park
Portola State Park
Prairie Creek Redwoods State Park
Red Rock Canyon State Park
Richardson Grove State Park
Robert Louis Stevenson State Park
Russian Gulch State Park
Saddleback Butte State Park
Salt Point State Park
Samuel P. Taylor State Park
San Bruno Mountain State Park
Sinkyone Wilderness State Park
Sugar Pine Point State Park
Sugarloaf Ridge State Park
Tomales Bay State Park
Topanga State Park
Van Damme State Park

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5019.50 and 5019.53, Public Resources Code.

HISTORY

1. Amendment filed 12–17–74; effective thirtieth day thereafter (Register 74, No. 51). For prior history, see Register 74, No. 31.
2. Amendment filed 5–5–76; effective thirtieth day thereafter (Register 76, No. 19).
3. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
4. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4752. State Reserves.

In the interest of the public, the following units in the State Park System are classified in the category of State Reserves, as provided in Section 5019.65 of the Public Resources Code, provided, however, that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

Armstrong Redwoods State Reserve
Ano Nuevo State Reserve
Antelope Valley California Poppy Reserve
Azalea State Reserve
Caspar Headlands State Reserve
John Little State Reserve
Jug Handle State Reserve
Knowland State Arboretum and Park
Kruse Rhododendron State Reserve
Los Angeles State and County Arboretum
Los Osos Oaks State Reserve
Mailliard Redwoods State Reserve
Mono Lake Tufa State Reserve
Montgomery Woods State Reserve
Point Lobos State Reserve
Smithe Redwoods State Reserve
Torrey Pines State Reserve
Tule Elk State Reserve

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5019.50 and 5019.65, Public Resources Code.

HISTORY

1. Amendment filed 5–6–77; effective thirtieth day thereafter (Register 77, No. 19). For prior history, see Register 77, No. 2.
2. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
3. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4753. State Recreation Units.

In the interest of the public the units listed below in the State Park System and the State Vehicular Recreation Area and Trail System are classified in the categories named, as provided in Section 5019.56 of the Public Resources Code, provided, however, that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

(a) State Recreation Areas.
Admiral William Standley State Recreation Area
Auburn State Recreation Area
Austin Creek State Recreation Area
Baldwin Hills State Recreation Area
Benbow Lake State Recreation Area
Benicia State Recreation Area
Bethany Reservoir State Recreation Area
Brannan Island State Recreation Area
Candlestick Point State Recreation Area
Castaic Lake State Recreation Area
Colusa–Sacramento River State Recreation Area
Durham Ferry State Recreation Area
Exposition Multi–Cultural Center State Recreation Area
Folsom Lake State Recreation Area

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Franks Tract State Recreation Area
Fremont Ford State Recreation Area
George H. Hatfield State Recreation Area
Harry A. Merlo State Recreation Area
Kings Beach State Recreation Area
Lake Del Valle State Recreation Area
Lake Elsinore State Recreation Area
Lake Oroville State Recreation Area
Lake Perris State Recreation Area
McConnell State Recreation Area
Millerton Lake State Recreation Area
Otterbein State Recreation Area
Picacho State Recreation Area
Providence Mountains State Recreation Area
Pyramid Lake State Recreation Area
Salton Sea State Recreation Area
San Luis Reservoir State Recreation Area (including Los Banos Creek)
Silverwood Lake State Recreation Area
Standish–Hickey State Recreation Area
Tahoe State Recreation Area (including William B. Layton Park)
Turlock Lake State Recreation Area
Willowbrook State Recreation Area
Woodson Bridge State Recreation Area
(b) Underwater Recreation Areas. (Reserved)
(c) State Beaches.
Asilomar State Beach
Atascadero State Beach
Avila State Beach
Bean Hollow State Beach
Bolsa Chica State Beach
Cardiff State Beach
Carlsbad State Beach
Carmel River State Beach
Carpinteria State Beach
Caspar Headlands State Beach
Cayucos State Beach
Corona del Mar State Beach
Dan Blocker State Beach
Dockweiler State Beach
Doheny State Beach
El Capitan State Beach
El Matador State Beach
El Pescador State Beach
Emma Wood State Beach
Gray Whale Cove State Beach
Half Moon Bay State Beach
Huntington State Beach
La Piedra State Beach
Las Tunas State Beach
Leo Carrillo State Beach
Leucadia State Beach
Lighthouse Field State Beach
Little River State Beach
Malibu Lagoon State Beach
Manchester State Beach
Mandalay State Beach
Manhattan State Beach
Manresa State Beach
McGrath State Beach
Montara State Beach
Monterey State Beach
Moonlight State Beach
Morro Strand State Beach
Moss Landing State Beach
Natural Bridges State Beach
New Brighton State Beach
Oxnard State Beach
Pelican State Beach
Pescadero State Beach
Pismo State Beach
Point Dume State Beach
Point Sal State Beach
Pomponio State Beach
Redondo State Beach
Refugio State Beach
Robert W. Crown Memorial State Beach
Royal Palms State Beach
Salinas River State Beach
San Buenaventura State Beach
San Clemente State Beach
San Elijo State Beach
San Gregorio State Beach
San Onofre State Beach
San Simeon State Beach
Santa Monica State Beach (including Pacific Ocean Park)
Seacliff State Beach
Silver Strand State Beach
Sonoma Coast State Beach
South Carlsbad State Beach
Sunset State Beach
Thornton State Beach
Topanga State Beach
Torrey Pines State Beach
Trinidad State Beach
Twin Lakes State Beach
Westport–Union Landing State Beach
Will Rogers State Beach
William Randolph Hearst Memorial State Beach
Zmudowski State Beach
(d) Wayside Campgrounds
Paul M. Dimmick Wayside Campground
Reynolds Wayside Campground
(e) State Vehicular Recreation Areas.
Carnegie State Vehicular Recreation Area
Clay Pit State Vehicular Recreation Area
Hollister Hills State Vehicular Recreation Area
Hungry Valley State Vehicular Recreation Area
Ocotillo Wells State Vehicular Recreation Area
Pismo Dunes State Vehicular Recreation Area
(f) State Urban Recreation Areas
Seccombe Lake State Urban Recreation Area

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.56, Public Resources Code.

HISTORY

1. Amendment filed 5–5–76; effective thirtieth day thereafter (Register 76, No. 19). For prior history, see Register 75, No. 33.
2. Amendment of subsection (a) filed 1–7–77; effective thirtieth day thereafter (Register 77, No. 2).
3. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
4. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4754. Historical Units.

In the interest of the public, the following units in the State Park System are classified in the category of Historical Units, as provided in Section 5019.59 of the Public Resources Code, provided, however, that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

Bale Grist Mill State Historic Park
Benicia Capitol State Historic Park

Bidwell Mansion State Historic Park
Bodie State Historic Park
California Citrus State Historic Park
Chumash Painted Cave Historic Park
Colonel Allensworth State Historic Park
Columbia State Historic Park
El Presidio de Santa Barbara State Historic Park
El Pueblo de Los Angeles State Historic Park
Empire Mine State Historic Park
Fort Humboldt State Historic Park
Fort Ross State Historic Park
Fort Tejon State Historic Park
Governor's Mansion
Hearst San Simeon State Historical Monument
Indian Grinding Rock State Historic Park
Jack London State Historic Park
La Purisima Mission State Historic Park
Los Encinos State Historic Park
Malakoff Diggins State Historic Park
Marshal Gold Discovery State Historic Park
Monterey State Historic Park
Old Sacramento State Historic Park
Old Town San Diego State Historic Park
Olompali State Historic Park State Historic Park
Petaluma Adobe State Historic Park
Pio Pico State Historic Park
Railtown 1897 State Historic Park
San Juan Bautista State Historic Park
San Pasqual Battlefield State Historic Park
Santa Cruz Mission State Historic Park
Shasta State Historic Park
Sonoma State Historic Park
Stanford House State Historic Park
State Indian Museum
Sutter's Fort State Historic Park
Wassama Round House State Historic Park
Watts Towers of Simon Rodia State Historic Park
Weaverville Joss House State Historic Park
Will Rogers State Historic Park
William B. Ide Adobe State Historic Park
Woodland Opera House State Historic Park

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Sections 5019.59 and 5019.71, Public Resources Code.

HISTORY

1. Amendment filed 5–5–76; effective thirtieth day thereafter (Register 76, No. 19). For prior history, see Register 74, No. 51.
2. Amendment filed 1–7–77; effective thirtieth day thereafter (Register 77, No. 2).
3. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
4. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4755. State Wildernesses.

In the interest of the public, the units of the State Park System listed below are classified in the category of State Wilderness as provided in Section 5019.68 of the Public Resources Code provided, however, that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

Anza–Borrego Desert State Wilderness
Boney Mountain State Wilderness
Cuyamaca Mountains State Wilderness
Mount San Jacinto State Wilderness
Santa Rosa Mountains State Wilderness
West Waddell Creek State Wilderness

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.68, Public Resources Code.

HISTORY

1. New section filed 3–15–74; effective thirtieth day thereafter (Register 74, No. 11). For history of former section, see Register 72, No. 50.
2. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 4756. State Beaches.

HISTORY

1. Amendment filed 12–3–71; effective thirtieth day thereafter (Register 71, No. 49).
2. Repealer filed 12–8–72; effective thirtieth day thereafter (Register 72, No. 50).

§ 4757. Wayside Campgrounds.

HISTORY

1. Repealer filed 12–8–72; effective thirtieth day thereafter (Register 72, No. 50).

§ 4758. Underwater Parks.

HISTORY

1. Repealer filed 12–8–72; effective thirtieth day thereafter (Register 72, No. 50).

§ 4759. Natural Preserves.

In the interest of the public the following units of the State Park System are classified in the category of natural preserves as provided in Section 5019.71 of the Public Resources Code, provided that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

Anderson Island Natural Preserve
Antone Meadows Natural Preserve
Big Lagoon Forest Natural Preserve—East
Big Lagoon Forest Natural Preserve—West
Big Lagoon Forest Natural Preserve—South
Burton Creek Natural Preserve
Doane Valley Natural Preserve
Edwin L. Z'berg Natural Preserve
Ellen Browning Scripps Natural Preserve
Hagen Canyon Natural Preserve
Heron Rookery Natural Preserve
Hungry Valley Oak Woodland Natural Preserve
Kaslow Natural Preserve
La Jolla Valley Natural Preserve
Least Tern Natural Preserve
Liberty Canyon Natural Preserve
Los Penasquitos Marsh Natural Preserve
Mitchell Caverns Natural Preserve
Morro Rock Natural Preserve
Natural Bridges Monarch Butterfly Natural Preserve
Pescadero Marsh Natural Preserve
Pismo Dunes Natural Preserve
San Mateo Creek Wetlands Natural Preserve
Santa Clara Estuary Natural Preserve
Theodore J. Hoover Natural Preserve
Udell Gorge Natural Preserve
Wilder Beach Natural Preserve
Woodson Bridge Natural Preserve

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.71, Public Resources Code.

HISTORY

1. Amendment filed 12–17–74; effective thirtieth day thereafter (Register 74, No. 51). For prior history, see Register 74, No. 38.
2. Amendment filed 8–15–75; effective thirtieth day thereafter (Register 75, No. 33).
3. Amendment filed 5–6–77; effective thirtieth day thereafter (Register 77, No. 19).
4. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).
5. Amendment filed 1–28–86; effective thirtieth day thereafter (Register 86, No. 6).

§ 4760. Cultural Preserves.

In the interest of the public, the following units of the State Park System are classified in the category of Cultural Preserves as provided in

Section 5019.74 of the Public Resources Code provided that there is reserved the power to repeal, amend, or modify this section as may from time to time hereafter be necessary and proper:

Ah-ha-kwe-ah-mac/Stonewall Mine Cultural Preserve
Barrel Springs Cultural Preserve
Cuish-Cuish Cultural Preserve (East Mesa)
Freeman Canyon Cultural Preserve
Gorman Cultural Preserve
Kechaye Cultural Preserve
Kumeyaay Soapstone Cultural Preserve
Pilicha Cultural Preserve (West Mesa)
Tataviam Cultural Preserve
Wilder Dairy Cultural Preserve

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 5019.74, Public Resources Code.

HISTORY

1. New section filed 1-28-86; effective thirtieth day thereafter (Register 86, No. 5).

Chapter 11. Department of Parks and Recreation—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF PARKS AND RECREATION
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION
1100 K STREET
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 11, Division 3 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 11. Department of Parks and Recreation
—Conflict of Interest Code

Section
4800. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, Government Code.

HISTORY

1. New Chapter 11 (Articles 1-6, Sections 4800-4865, not consecutive) filed 7-8-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2-16-77 (Register 77, No. 28). For former Chapter 11, see Register 75, No. 33.
2. Repealer of Chapter 11 (Articles 1-7, Sections 4800-4865, Appendices A and B) and new Chapter 11 (Section 4800 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Repealer of section and Appendix and new section and Appendix filed 2-2-2000; operative 3-3-2000. Approved by Fair Political Practices Commission 12-16-99 (Register 2000, No. 5).

Chapter 11.5. California Register of Historical Resources

§ 4850. Authority.

On September 27, 1992, Assembly Bill 2881 (Statutes of 1992, Chapter 1075) was signed into law amending the Public Resources Code as it affects historical resources. This legislation, which became effective on January 1, 1993, also created the California Register of Historical Resources, henceforth the California Register.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New chapter 11.5 (sections 4850-4858 and appendix) and section filed 12-2-97; operative 1-1-98 (Register 97, No. 49).

§ 4850.1. Purpose.

The California Register is an authoritative listing and guide to be used by state and local agencies, private groups, and citizens in identifying the existing historical resources of the state and to indicate which resources deserve to be protected, to the extent prudent and feasible, from substantial adverse change.

Definitions are found in Appendix A, "A Glossary of Terms", of this chapter.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12-2-97; operative 1-1-98 (Register 97, No. 49).

§ 4851. Historical Resources Eligible for Listing in the California Register of Historical Resources.

The California Register consists of historical resources that are: (a) listed automatically; (b) listed following procedures and criteria adopted by the State Historical Resources Commission, henceforth the Commission; and (c) nominated by an application and listed after a public hearing process.

(a) Historical resources automatically listed in the California Register include the following pursuant to California Public Resources Code Section 5024.1(d)(1) and (2):

(1) California historical resources listed in, or formerly determined eligible for, the National Register of Historic Places, henceforth the National Register. "Formally determined eligible" for the purpose of this section means determined eligible through one of the federal preservation programs administered by the California Office of Historic Preservation, henceforth the Office. Specifically, these programs are the National Register, Tax Certification (Evaluation of Significance, Part 1, 36 CFR Part 67), and National Historic Preservation Act (Section 106, 16 U.S.C. 470f) reviews of federal undertakings.

(2) California Registered Historical Landmarks, henceforth Landmarks, from No. 770 onward.

(3) Upon effective date of this chapter, the Office will notify owners by first class mail that as a result of listing or being formally determined eligible for listing in the National Register of Historic Places, and/or being designated a California Registered Historical Landmark subsequent to, and including No. 770, the resource has been automatically placed in the California Register. The owner(s) will be advised of the criteria for listing in the California Register and procedures for removal found in Sections 4855 and 4856 of this chapter. Removal may be requested at any time, but must satisfy one of the criteria for removal as listed in Section 4856(a) of this chapter.

(b) Historical resources which require action by the State Historical Resources Commission to be listed in the California Register. The following resources require review and action by the Commission prior to listing, but are not subject to the formal nomination and application procedures described in Section 4851(c) of this chapter.

(1) Landmarks with numbers preceding No. 770 pursuant to California Public Resources Code Section 5024.1(d)(2). Procedures for inclusion of landmarks preceding No. 770 in the California Register have not been adopted by the State Historical Resources Commission at the time of inception of this chapter.

(2) California Points of Historical Interest, hereafter Points of Historical Interest, pursuant to California Public Resources Code Section 5024.1(d)(3). Points of Historical Interest, which have been reviewed by the Office and recommended for listing by the Commission, will be included in the California Register if the following conditions are met:

(A) The resource meets the statutory criteria for the California Register;

(B) A boundary is provided that clearly delineates the area of historic importance;

(C) A list of contributing and noncontributing features is provided. Contributing features are those remaining from the resource's period of historic significance that retain integrity; and

(D) The application is accompanied by the appropriate State Historical Resources Commission approved recordation form, such as the DPR Form 523–Historic Resources Inventory Form.

Historical resource owners shall be notified of proposed Commission actions to nominate Points of Historical Interest to the California Register sixty (60) days prior to the Commission meeting at which a hearing is scheduled.

The Office shall notify resource owners of time and location of the hearing.

The Commission shall hear testimony regarding whether or not the criteria for listing a Point of Historical Interest in the California Register have been met. If the criteria for listing are met, the Commission shall recommend that the historical resource be made a Point of Interest to the Director of the Department of Parks and Recreation. When the Director signs the nomination, the historical resource shall be listed as a Point of Historical Interest and listed in the California Register.

(c) Historical resources which require nomination to be listed in the California Register pursuant to California Public Resources Code Section 5024.1(e)(1)–(5). Historical resources may be nominated to the California Register by individuals, organizations, or government agencies.

(1) An historical resource or historic district;

(2) An historical resource contributing to the significance of a nominated historic district;

(3) A group of historical resources identified in historic resource surveys, if the survey meets the criteria and standards of documentation listed in Section 4852(e);

(4) An historical resource, a group of historical resources, or historic districts designated or listed as city or county landmarks or historical resources or districts pursuant to any city or county ordinance, if the criteria for designation or listing under the ordinance have been reviewed by the Office as meeting the California Register criteria as stated in this chapter and approved by the Commission; or

(5) An historical resource or a group of local landmarks or historical resources designated under any municipal or county ordinance which has not been previously approved by the Office.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470a), as amended; National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); Title 36, Parts 60, 63, 67 and 800, Code of Federal Regulations; and Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4852. Types of Historical Resources and Criteria for Listing in the California Register of Historical Resources.

The criteria for listing historical resources in the California Register are consistent with those developed by the National Park Service for listing historical resources in the National Register, but have been modified for state use in order to include a range of historical resources which better reflect the history of California. Only resources which meet the criteria as set out below may be listed in or formally determined eligible for listing in the California Register.

(a) Types of resources eligible for nomination:

(1) Building. A resource, such as a house, barn, church, factory, hotel, or similar structure created principally to shelter or assist in carrying out any form of human activity. "Building" may also be used to refer to an historically and functionally related unit, such as a courthouse and jail or a house and barn;

(2) Site. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing building, structure, or object. A site need not be marked by physical remains if it is the location of a prehistoric event, and if no buildings, structures, or objects marked it at that time. Examples of such sites are trails, designed landscapes, battlefields, habitation sites, Native American ceremonial areas, petroglyphs, and pictographs;

(3) Structure. The term "structure" is used to describe a construction made for a functional purpose rather than creating human shelter. Examples of structures include mines, bridges, and tunnels;

(4) Object. The term "object" is used to describe those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed, as opposed to a building or a structure. Although it may be moveable by nature or design, an object is associated with a specific setting or environment. Objects should be in a setting appropriate to their significant historic use, role, or character. Objects that are relocated to a museum are not eligible for listing in the California Register. Examples of objects include fountains, monuments, maritime resources, sculptures, and boundary markers; and

(5) Historic district. Historic districts are unified geographic entities which contain a concentration of historic buildings, structures, objects, or sites united historically, culturally, or architecturally. Historic districts are defined by precise geographic boundaries. Therefore, districts with unusual boundaries require a description of what lies immediately outside the area, in order to define the edge of the district an to explain the exclusion of adjoining areas. The district must meet at least one of the criteria for significance discussed in Section 4852(b)(1)–(4) of this chapter.

Those individual resources contributing to the significance of the historic district will also be listed in the California Register. For this reason, all individual resources located within the boundaries of an historic district must be designated as either contributing or as noncontributing to the significance of the historic district.

(b) Criteria for evaluating the significance of historical resources. An historical resource must be significant at the local, state, or national level under one or more of the following four criteria:

(1) It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States;

(2) It is associated with the lives of persons important to local, California, or national history;

(3) It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values; or

(4) It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

(c) Integrity. Integrity is the authenticity of an historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance. Historical resources eligible for listing in the California Register must meet one of the criteria of significance described in section 4852(b) of this chapter and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. Historical resources that have been rehabilitated or restored may be evaluated for listing.

Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must also be judged with reference to the particular criteria under which a resource is proposed for eligibility. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, or architectural significance.

It is possible that historical resources may not retain sufficient integrity to meet the criteria for listing in the National Register, but thy may still be eligible for listing in the California Register. A resource that has lost

its historic character or appearance may still have sufficient integrity for the California Register if it maintains the potential to yield significant scientific or historical information or specific data.

(d) Special considerations:

(1) Moved buildings, structures, or objects. The Commission encourages the retention of historical resources on site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving an historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historical resource. An historical resource should retain its historic features and compatibility in orientation, setting, and general environment.

(2) Historical resources achieving significance within the past fifty (50) years. In order to understand the historic importance of a resource, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource. A resource less than fifty (50) years old may be considered for listing in the California Register if it can be demonstrated that sufficient time has passed to understand its historical importance.

(3) Reconstructed buildings. Reconstructed buildings are those buildings not listed in the California Register under the criteria in Section 4852(b)(1), (2), or (3) of this chapter. A reconstructed building less than fifty (50) years old may be eligible if it embodies traditional building methods and techniques that play an important role in a community's historically rooted beliefs, customs, and practices; e.g., a Native American roundhouse.

(e) Historical resource surveys. Historical resources identified as significant in an historical resource survey may be listed in the California Register. In order to be listed, the survey must meet the following: (1) the resources meet the criteria of Section 4852(b)(1)–(4) of this chapter; and (2) the survey documentation meets those standards of resource recordation established by the Office in the "Instructions for Nominating Historical Resources to the California Register" (August 1997), Appendix B.

(1) The resources must be included in the State Historical Resources Inventory at the time of listing of the survey by the Commission.

(2) The Office shall review all surveys to assure the standards of resource recordation, which can be found in the "Instructions for Nominating Historical Resources to the California Register" (August 1997), Appendix B of this chapter, have been met. If the survey meets the standards, the Office shall recommend to the Commission that all resources with a significance rating of category 1 through 4, or any subcategories thereof, on DPR Form 523 be listed in the California Register. The Office shall review all category 5 determinations for consistency with the California Register criteria of significance as found in Section 4852(b) of this chapter. Office review will occur within sixty (60) days of receipt of the survey. At the end of sixty (60) days, the Office will either: (1) forward the survey for consideration by the Commission or (2) request additional information.

The status codes, established to indicate eligibility to the National Register of Historic Places, have the following meanings:

(A) Category 1—Listed in the National Register of Historic Places;

(B) Category 2—Formally determined eligible for listing in the National Register;

(C) Category 3—Appears eligible for listing in the National Register;

(D) Category 4—Could become eligible for listing in the National Register; or

(E) Category 5—Locally significant.

(3) If the results of the survey are five or more years old at the time of nomination, the documentation for a resource, or resources, must be updated prior to nomination to ensure the accuracy of the information. The statute creating the California Register requires surveys over five (5) years old to be updated.

(f) Historical resources designated under municipal or county ordinances. Historical resources designated under municipal or county ordinances which have the authority to restrict demolition or alteration of historical resources, where the criteria for designation or listing have not been officially approved by the Office, may be nominated to the California Register if, after review by Office staff, it is determined that the local designation meets the following criteria:

(1) The ordinance provides for owner notification of the nomination of the resource for local historical resource designation and an opportunity for public comment.

(2) The criteria for municipal or county historical resource designation consider the historical and/or architectural significance and integrity of the historical resource and require a legal description of the resource.

(3) The designating authority issues findings or statements describing the basis of determination for designation.

(4) The designation provides some measure of protection from adverse actions that could threaten the historical integrity of the historical resource.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Title 36, Part 60, Code of Federal Regulations; and Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4853. Application Format.

Applications shall be submitted on: (1) DPR Form 523–California Historic Resources Inventory Form, dated prior to January 1995; (2) DPR Form 422–Archeological Site Record, dated prior to January 1995; or (3) DPR Form 523 including supplemental forms DPR 523(c), (f), (g), (h), (i), (j), (k) and/or (*l*) dated prior to January 1995, as appropriate. In addition, the applicant shall submit a set of clearly labeled photographs, as described in the OHP "Instructions for Nominating Historical Resources to the California Register" (August 1997), Appendix B, with the recordation form. If historical resources are recorded after the effective date of this chapter, a DPR Form 523 must be used. In addition, the Commission may require other information for specific types of historical resources as listed in Section 4853 of this chapter.

(a) General requirements. The requirements of Section 4853(a)(1)–(4) of this chapter shall apply to all historical resources which are nominated to the California Register:

(1) The applicant shall use the inventory form which corresponds to the date of recordation of the resource. The inventory form shall be accompanied by a cover letter which includes the name of the applicant, the resource owner and local government with land-use control authority, hereafter local government, and a concise statement of significance. The statement of significance should clearly list the justification for the importance of the historical resource.

(2) A sketch map shall be included, clearly showing the boundaries of the nominated resources, the footprint of all contributing and noncontributing resources, a directional North arrow, and scale. Careful and accurate information shall be provided with sufficient detail to ensure that a legal description of the proposed historical resource may be recorded. These details may include the UTM coordinates marked on a section grid, United States Geological Survey maps, parcel number(s), and legally recorded boundary lines. Boundaries of sites with no material evidence of the significant event must be clearly defined on the map on the basis of specific and definitive historical documentation.

(3) One or more color slides and black and white or color photos shall be provided to properly document the historical resource. Color slides should provide a realistic overview of the historical resource in its setting or detailed views of the historical resource itself, as appropriate. The Commission may require that the applicant provide photos of contributing historical resources on surveys which are over five (5) years old. All photos should be labeled, including the date taken and a location of the image relative to the sketch map described above.

(4) Primary numbers will be assigned by the Regional Information Center. The applicant shall provide a copy of the application to the Information Center which has responsibility for information regarding historical resources for the county in which the resources are located (see Appendix B) at the same time the application is submitted to the Office. The Office of Historic Preservation will assure primary numbers are assigned.

(b) Information Required for Historical Resources.

(1) Individual nominated resources. A single completed DPR Form 523 or Form 422 shall be submitted for each historical resource which is individually nominated. For resources recorded prior to the effective date of this chapter either a single completed DPR Form 523 or Form 422 shall be submitted for each historical resource which is individually nominated. If the historical resource is recorded after the effective date of this chapter, a DPR Form 523 (dated January 1995) shall be submitted for each historical resource.

(2) Historic districts. In the case of an historic district, the applicant shall complete one master form for the district as a whole, with an abbreviated form for each contributing resource. A list of noncontributing resources is required and must be provided in the cover letter. Owner information for each resource must be provided in the cover letter. Slides of contributing historical resources and/or streetscapes shall be included. Black and white or color photographs of each contributing historical resource and representative streetscape are required.

(3) Archeological resources. Archeological resources will be considered for nomination only after having been assigned a Site Trinomial Number by the appropriate Regional Information Center (see Appendix B). The Commission may require additional documentation to more accurately identify and define the site. Depending upon the date the resource was recorded, the DPR Form 523 (dated January 1995) or Form 422 must be accompanied by a statement of significance or research design which explains why the resource qualifies for listing in the California Register.

(4) Historical resource survey. Historical resources which have recordation forms already on file in the inventory with the Office will not require additional DPR Inventory Forms 523 (dated January 1995) unless the Commission requests re–evaluation or re–survey. A cover letter shall provide the owner and the local government information as described in Section 4853(a)(1) of this chapter, an overview of survey methodology to verify that the survey meets the standards discussed in Section 4852(e) of this chapter and adequate mapping showing all areas surveyed.

(5) Historical resources and historic districts designated or listed as city or county landmarks, historic resources or districts pursuant to any city or county ordinance, and local landmarks and other resources designated under municipal or county ordinances.

DPR Form 523 shall be submitted for all local landmarks or locally designated historical resources that have not previously been documented or do not have approved recordation forms on file with the Office. A cover letter shall be submitted, as described in Section 4853(a) of this chapter, and it must include information regarding resource ownership, local government, and a list of all resources included in the nomination. A copy of the ordinance or criteria for local designation must be submitted with the application. Submitting a copy of the ordinance is required whether the resource was designated under a local historic preservation ordinance, which may cover a group or category of historical resources, or under an ordinance or resolution designating only specific historical resource which is being nominated.

NOTE: Authority cited: Sections 5020.4, 5024.1, 5024.5 and 5024.6, Public Resources Code. Reference: Section 27288.2, Government Code; and Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 5029, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4854. Application Procedures.

(a) Ownership information. It is the responsibility of the applicant to provide complete information regarding the ownership of those historical resources which the applicant wishes to be included in the California Register. The ownership data must include assessor parcel numbers, maps, and a legal description of the resources. The applicant shall provide the owners' names and addresses on mailing labels, as well as any information necessary to establish whether a proposed resource or district has more than one owner. A boundary map and a list of all resource owners within the proposed district boundaries shall be included for each district. The list shall indicate whether the property of each owner is contributing or noncontributing to the significance of the district. Resources will not be listed in the California Register over the owner's objection, or in the case of a district, a majority of resource owners, but will be "formally determined eligible for listing" (see Section 4855(c) of this chapter).

(b) Submitting the application. Historical resources may be nominated by any individual or group including, but not limited to, members of the general public, private organizations, or local government with control authority over the designated historical resource.

(1) Local government, in whose jurisdiction the historical resource is located, shall submit their applications directly to the Office.

(2) If the applicant is not a local government, the applicant must notify the clerk of the local government by certified mail that an application will be filed with the Office and request that the local government join in the nomination and/or provide comments. Notification to the clerk of the local government shall include a copy of the application. Ninety (90) days after notification to the clerk of the local government, the applicant shall forward all completed applications and any comments to the Office.

(c) If the applicant is not the owner of the resource being nominated, within thirty (30) days of receipt of the application, the Office will provide a copy of the application to the owner and request any additional information.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4855. State Historical Resources Commission's Public Hearing of a Nomination.

After technical review by the Office, the nomination will be scheduled for a hearing by the State Historical Resources Commission. The Commission will only consider comments that relate to the criteria for listing a resource in the California Register.

(a) Public notification. At least sixty (60) days before the hearing to consider the nomination for listing, the Office shall do all of the following:

(1) Notify all affected historical resource owners that their resource has been nominated for listing; the time and place set for the hearing; and that the Commission will consider public comments related to whether the resource meets the criteria for listing in the California Register as well as any objections of the owner(s).

(2) Notify the local government and interested local agencies of the time and place set for the hearing and the opportunity for public comments in support of or opposition to the proposed listing.

(3) Notify the general public by means of the Commission's hearing notices of the scheduled hearing date and the opportunity to comment on the nomination.

(4) In the case of an historic district, nominated either individually or as part of a survey, the Office must make a reasonable effort to obtain the identities and addresses of all owners of resources within the proposed district. The Commission must provide notice of the hearing and opportunity to comment or object to all identified owners whether or not their properties were nominated as contributing resources.

(b) Support of or objections to the nomination. The Commission shall consider public comments when it determines whether to list the historical resource in the California Register. Any person or organization, including the following, may submit supporting or opposing comments to the Office before the hearing.

(1) Resource owners. Private resource owners must make any objection to listing in a notarized letter stating that they are the sole or partial owners, that they object to the listing, and the reasons for their objection. Letters of support from private resource owners are welcomed, but not required. If a private resource owner does not reply to a properly transmitted letter of notification, the absence of a reply will be interpreted as consent to the historical resource designation.

(A) Each owner or partial owner of a privately owned individual historical resource has one vote regardless of what percentage of the resource such person owns. Within a district, each owner has one vote regardless of how many buildings, or what percentage of the area of the proposed district, such person owns.

(B) If a majority of private resource owners should object for any reason, the proposed individual resource or district will not be listed. However, in such cases, the Commission shall designate the resource as "formally determined eligible for listing in the California Register." A resource that has been designated as eligible may be listed at a later time if, and when, the objection is withdrawn.

(2) Local government. Support of, and objections by, local government are to be given full and careful consideration. When the local government objects to the listing, the findings of the Commission shall identify the historical or cultural significance of the resource and explain why the resource was listed in the California Register over the objections of the local government.

(c) Determinations of eligibility and formal listing. A privately owned resource may not be listed in the California Register over the objection of its owner, or in the case of a resource with multiple owners, over the objection of a majority of private resource owners. A district may not be listed in the California Register over the objection of a majority of private resource owners within the proposed district. If a district is listed, it will be listed in its entirety and all contributing resources will be listed, whether or not the owner of that resource has objected.

(1) If a private resource cannot be listed solely due to owner objection, the Commission shall designate the resources as "formally determined eligible for listing."

(2) An historical resource shall be considered formally "listed in the California Register" when the Commission, upon reviewing the nomination, designates the resource as eligible for listing and accepts it for official listing in the California Register.

(3) The Commission shall adopt written findings to support its determinations. Findings shall include a description of the historical resources and the historical or cultural significance of the resources and identification of those criteria on which any determination was based.

(4) Within forty–five (45) days after approval or disapproval of a nomination by the Commission, the Officer shall notify the applicant, resource owner(s), and the affected local government in writing of the Commission's decision.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Title 36, Part 60, Code of Federal Regulations; and Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4856. Criteria and Procedures for Removal of an Historical Resource from the California Register of Historical Resources.

Historical resources are formally determined eligible for, or listed in, the California Register on the basis of an evaluation of the historical data by qualified professionals. The Commission may, at its discretion, consider a request for formal delisting after a public hearing has taken place.

(a) The Commission may remove an historical resource from the California Register if one of the following criteria is satisfied:

(1) The historical resource, through demolition, alteration, or loss of integrity has lost its historical qualities or potential to yield information; or

(2) New information or analysis shows that the historical resource was not eligible at the time of its listing.

(b) Documentation supporting a request for removal of an historical resource from the California Register shall be provided to the Commission for its review. The documentation shall include:

(1) A written request from the Officer, resource owner, a member of the public, or local government in which the historical resource is located recommending the removal of the resource, including a detailed justification based on the criteria listed in Section 4856(a)(1) or (2);

(2) Photographs and other documentation regarding the current condition of the historical resource;

(3) Photographic and archival documentation of the historical resource at the time of listing; and

(4) Complete current ownership information for historical resources included in the listing.

(c) The Office shall notify the resource owners, the local government in which the historical resource is located, the general public, and the individual, organization, or government authority which made the original nomination at least sixty (60) calendar days prior to the date scheduled for the public hearing. At the hearing, the Commission shall hear comments and receive information regarding whether or not the criteria for removal of an historical resource from the California Register have been met. If the criteria have been met, the resource shall be removed from the California Register. If the criteria for removal have not been met, the historical resource shall remain in the California Register. The decision of the Commission shall be final unless a request for reconsideration is made pursuant to Section 4857 of this chapter.

(d) The Office shall notify the resource owners, the local government described above, the general public, and the individual, organization, or government agency which made the original nomination within sixty (60) days after reaching a final decision. The decision of the Commission shall be binding.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4857. Requests for Redetermination by the State Historical Resources Commission.

Requests for redetermination may be submitted within thirty (30) days after the Commission transmits notice of its final determination. Such requests shall set forth the reasons why the Commission's determination was improper, including all new relevant facts and information.

(a) The Commission has the power to reverse or alter its prior determinations, in whole or in part, if any of the following occur:

(1) There is a significant error in the facts, information, or analysis on which the prior decision was based; or

(2) The prior determination, in light of current information, appears to have been arbitrary, capricious, or based on substantial error.

(b) The Commission shall advise the applicant within sixty (60) days after receipt of a request for redetermination whether it will consider such request, and if so, set the date for a hearing by the Commission.

(c) If the request for redetermination is denied, then the original determination shall become final for all purposes, unless the resource is later shown to be demolished, altered, or has lost its integrity.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Sections 5020.1, 5020.4, 5020.7, 5024.1, 5024.5, 5024.6, 21084 and 21084.1, Public Resources Code.

HISTORY

1. New section filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

§ 4858. Saving Clause.

If any one or more of the regulations in this chapter, or any portion of any one of these regulations is found or held to be invalid, all other regulations and portions of regulations shall be severable from the invalid regulation or portion and shall be presumed to be valid.

NOTE: Authority cited: Sections 5020.4, 5024.1 and 5024.6, Public Resources Code. Reference: Section 11350, Government Code; *California Drive–in Restau-*

rant Asso. v. Clark (1943) 22 Cal.2d 287, 140 P.2d 657; and *Schenley Affiliated Brands Corp. v. Kirby* (1971) 21 Cal.App.3d 177, 98 Cal.Rptr. 609.

HISTORY

1. New section and appendix A filed 12–2–97; operative 1–1–98 (Register 97, No. 49).

Appendix A

A Glossary of Terms as Used in the California Register of Historical Resources

A

Archaeological District. An area defined by a significant concentration, linkage, or continuity of sites.

Archaeological Site. A bounded area of a resource containing archaeological deposits or features that is defined in part by the character and location of such deposits or features.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa). Provides for protection of terrestiral and submerged archaeological resources. Authorizes criminal prosecution for the excavation, removal, or damage of archaeological resources on public or Indian lands without appropriate permit. Governs the transportation of illegally obtained materials, access to information, and the permitting process.

B

Boundaries. Lines delineating the geographical extent or area of an historical resource.

Building. A resource, such as a house, barn, church, factory, hotel, or similar structure, created principally to shelter or assist in carrying out any form of human activity. Also, used to refer to an historically and functionally related unit, such as a courthouse and jail or a house and barn.

C

California Historical Resources Information System (CHRIS). That collection of Site Records, Historic Resource Inventory Forms, and all information on historical resources which has been acquired and managed by the State Office of Historic Preservation since 1975. This shall include the State Historic Resources Inventory, the California Archaeological Site Inventory, properties listed in the National Register of Historic Places, California Registered Historical Landmarks, California Points of Historical Interest, and the California Register of Historical Resources.

Conservation Easement. A less than fee simple interest in real property recorded as a deed restriction which is designated to protect the historic, cultural, archaeological, or ecological characteristics of a property. For purposes of the regulations in this chapter, it is interchangeable wit the term "Preservation Easement."

Cultural Heritage. Pertaining to the sum total of traditions, body of knowledge, etc., inherited as possessions, characteristics, or conditions expressing a traditional way of life subject to gradual, but continuous modifications by succeeding generations.

Cultural Resource. See Historical Resource.

Culture. A linkage of people possessing shared values, beliefs, and historical associations coupling social institutions and physical materials necessary for collective survival.

D

Disclosure, archaeological site. To make available any records that pertain to an archaeological site. However, "archaeological site disclosure" need not take place if the nomination of a resource to the California Register requires making known any records which related to archaeological site information when those records are maintained by either the Department of Parks and Recreation or the State Historical Resources Commission.

District. A geographic area which possesses a significant concentration, linkage, or continuity of sites, buildings, areas, structures, or objects which are united historically, culturally, or aesthetically by plan, history, or physical development. For purposes of the regulations in this chapter, this term is interchangeable with "Historic District."

DPR Form 422. Department of Parks and Recreation Archaeological Resources Inventory Form Number 422.

DPR Form 523. Department of Parks and Recreation Historic Resources Inventory Form Number 523.

E

Evaluation. A process carried out by the State Historical Resource Commission whereby the significance and integrity of an historical resource is judged, thereby determining its eligibility for listing.

F

Footprint. The form or pattern made by the perimeter of a building or other resource. Often used in connection with sketch maps or boundaries. A sketch map may show the footprint of historic resources as they are found on a parcel of land.

Formally Determined Eligible for Listing. An historical resource shall be considered "formally determined eligible for listing" when the State Historical Resources Commission accepts the nomination of the historical resource and designates the property as eligible for listing in the California Register.

G

Geographical Area. An area of land containing historical or archaeological resources that can be identified on a map and delineated by boundaries.

H

Historic Context. An organizing structure for interpreting history that groups information about historical resources sharing a common theme, geographical area, or chronology. The development of "historic context" is a foundation for decisions regarding the planning, identification, evaluation, registration, and treatment of historical resources based upon comparative historic significance.

Historic District. A geographic area which contains a concentration of historic buildings, structures, or sites united historically, culturally, or architecturally. "Historic districts" are defined by precise geographic boundaries. Therefore, "historic districts" with unusual boundaries require a description of what lies immediately outside the areas in order to define the edge of the district and to explain the exclusion of adjoining areas.

Historic Fabric. (1) With regard to an historic building, "historic fabric" means the particular materials, ornamentation, and architectural features which are consistent with the historic character of the building. (2) With regard to an historic district, "historic fabric" means all sites, buildings, structures, features, objects, landscaping, street elements, and related design components of the district which are consistent with the historic character of the district. (3) With regard to an archaeological district, "historic fabric" means sites, standing structures or buildings, historic landscape (land disturbance such as grading or construction), features (remnants of walls), and objects (artifacts) which are consistent with the historic character of the district.

Historic Integrity. The ability of a resource to convey its historical significance.

Historic Resources Inventory Form (DPR Form 523). A document which describes the characteristics and locations of buildings, structures, objects, and districts recorded for inclusion in an Historic Resources Inventory.

Historical Landmarks. See State Historical Landmark.

Historical Resource. Any object, building, structure, site, area, place, record, or manuscript which is historically or archaeological significant, or which is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural history of California.

Historical Resources Inventory. A set of data, such as a list of historical resources, generated through an Historical Resources Survey.

Historical Resources Survey. The process of systematically identifying, researching, photographing, and documenting historical resources within a defined geographic area.

I

Identification. The process by which information is gathered regarding historical resources.

Information Center. See Regional Information Center.

L

Landscape, Cultural. A geographic area that (1) has been used, shaped, or modified by human activity, occupation, intervention; or (2) possesses significant value in the belief system of a culture or society.

Landscape, Designed. A geographic area that (1) has significant as a design or work of art; (2) was consciously designed and laid out by (a) a designer according to academic or professional design standards, theories, or philosophies of landscape architecture; or (b) by an amateur using a recognized style or tradition; (3) has an historical association with a significant person, trend, or event in landscape gardening or landscape architecture; or (4) has a significant relationship to the theory or practice of landscape architecture.

Landscape, Rural. A geographic area that (1) has historically been shaped or modified by human activity, occupancy, or intervention; (2) possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings or structures, roads or waterways, or natural features; or (3) provides a sense of place.

Listed. A California Register historical resource shall be considered "listed" when (1) the State Historical Resources Commission, after reviewing the nomination of the historical resource, accepts it for listing in the California Register; or (2) it has been automatically "listed" under Public Resources Code Section 5024.1(d)(1) & (2).

Local government. A public agency with land-use control authority over a designated historical resource. Local governments may include special district, tribal, city, or county governments.

M

Manuscript. (1) Bodies or groups of personal papers. (2) Collections of documents acquired from various sources according to a plan. (3) Individual documents acquired by a manuscripts repository because of their special importance. (Society of American Archivists)

N

National Environmental Policy Act of 1989 (NEPA). (42 U.S.C. 4321–4327 (1969) (amended)). Created a process by which to analyze significant environmental impacts, including impacts to historical resources, for federally funded or licensed actions.

National Historic Preservation Act of 1966 (NHPA). (16 U.S.C. 470 (1966) (amended)). Established the National Register of Historic Places. Created a partnership between federal, state, and local agencies to extend the national historic preservation programs to properties of state and local significance.

National Register Criteria. The federally established standards for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

National Register of Historic Places, The. (16 U.S.C. 470a, 36 C.F.R. Parts 60, 63). The official inventory of districts, sties, buildings, structures, and objects significant in American history, architecture, archeology, and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 (16 U.S.C. 461–467 (1935) (amended)) and the National Historic Preservation Act of 1966 (16 U.S.C. 470 (1966) (amended)).

Nomination. A formal application, submitted to the State Historical Resources Commission, for listing an historical resource on the California Register of Historical Resources.

O

Object. Manifestations that are primarily artistic in nature, or are relatively small in scale and simply constructed. The "object" may be a fixture (real property) or movable (personal property). Although it may be movable by nature or design, an object must be associated with a specific setting or environment. The "object" should be in a setting appropriate to its significant historical use, role or character; for example, a fountain or boundary marker.

Officer. The State Historic Preservation Officer (SHPO) is appointed by the Governor under the authority of Public Resources Code Section 5020.6. The SHPO serves as the Chief Administrative Officer of the Office of Historic Preservation and Executive Secretary of the State Historical Resources Commission. The SHPO administers state and federally mandated historic preservation programs under the authority of the National Historic Preservation Act of 1966, Section 101(b)(3), (16 U.S.C. 470 (1966) (amended)) and Cal. Pub. Res. Code Section 5024.

Owner. Those individuals, partnerships, corporations, or public agencies holding fee simple title to a resource. The term does not include individuals, partnerships, corporations, or public agencies holding easements or less fee simple interests, including leaseholds.

P

Penal Code, Section 622.5. Provides misdemeanor penalties for every person, other than the owner, who injures or destroys objects of historical or archeological interest located on public or private lands.

Point of Historical Interest. The California Point of Historical Interest Program (Cal. Pub. Res. Code Section 5021) is a state historical resources registration program, established in 1965, which provides official recognition for historical resources that are significant at a county or regional level, but do not quality for designation as California Registered Historical Landmarks.

Preservation (treatment). The act or process of applying measures to sustain the existing form, integrity, or historic fabric of an historical building or structure, or the form or vegetative cover of an historic site. It may include stabilization work, as well as ongoing maintenance of the historic fabric.

Preservation Commission. A city or county board of appointed citizens with assigned responsibilities for surveying, designating, and protecting historical resources. May also be called an historic review board, design review board, landmarks commission, or cultural heritage commission.

Primary Number. The number used to identify and retrieve records regarding a specific site in the California Historical Resources Information System. The Primary Number describes the location of a resource in the same manner as a Site Trinomial Number.

Protection (treatment). The act or process of applying measures to affect the physical condition of an historical resource by guarding it from deterioration, loss, or attack by natural causes, or to cover or shield it from threat of danger or harm. In the case of buildings or structures, these measures are usually temporary; however, with regard to archeological resources, protective measures may be temporary or permanent.

Public Resources Code, Section 5097.5. Defines as a misdemeanor the unauthorized disturbance or removal of archeological, historical, or paleontological resources located on public lands.

R

Reconstruction (treatment). The act or process of reproduction through construction the exact form and detail of a vanished building, structure, or object, or any part thereof, as it appeared at a specified period of time.

Recordation. Section 27288.2 of the Government Code and Section 5029 of the Public Resources Code require the County Recorder to record a certified resolution of historical resources designation containing the name of the current property owner, the historical resources registration program, the designating entity, the specific historical resources designation, and a legal description of the property.

Regional Information Center. An Information Center of the California Historical Resources Information System, under contract to the Office of Historic Preservation, which receives, manages, and provides information on historical and archeological resources. "An Information Center" may also provide training or technical assistance on a fee–for–service basis.

Registration. A program by which an historic resource is documented, evaluated, and determined eligible or nominated for listing as a type of historical resource. Such programs may be local, state, or national.

Rehabilitation (treatment). The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.

Research Design. Reveals the logic that will be used to direct identification, documentation, investigation, analysis, or treatment of an historical resource that identifies the goals, methods and techniques, potential results, and the relationship of the potential results to other proposed activities or treatments.

Resource, Contributing. A resource which by location, design, setting, materials, workmanship, feeling, and association adds to the sense of historical authenticity, historical development, or value of an historical resource.

Resource, Non Contributing. An historical resource which does not add to the sense of historical authenticity or evolution of an historic property or where the location, design, setting, materials, workmanship, history, and/or association of the historical resource have been so altered or deteriorated that the overall integrity of that resource has been irretrievably lost.

Restoration (treatment). The act or process of reproducing the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

S

Secretary of Interior Standards. Identified in the **Secretary of the Interior Standards and Guidelines for Historic Preservation Projects** (36 C.F.R. 67), with accompanying interpretive guidelines, which are utilized by federal agencies in the preservation of historical properties that are listed, or are eligible for listing, on the National Register. They are also used by some State Historic Preservation Offices in evaluating projects proposed as historical resources in accordance with federal regulations; or by local governments, organizations, and individuals in making decisions about the identification, evaluation, registration, or treatment of historic properties. The **Secretary of the Interior's Standards for Rehabilitation** is aimed at retaining and preserving those features and materials which are important in defining the historic character of an historical resource. Technical advice about archeological and historic preservation activities and methods is also included in the **Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.**

Site. A location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing building, structure, or object. A "site" need not be marked by physical remains if it is the location of a prehistoric or historic event and if no buildings, structures, or objects marked it at that time. Examples include trails, designed landscapes, battlefields, habitation sites, Native American ceremonial areas, petroglyphs, and pictographs.

Site Record. A document which describes the characteristics and location of a site, and which has been completed for entry in the California Archaeological Site Inventory.

Site Trinomial Number. A site registration number assigned by the Office of Historic Preservation to a specific archeological resource under which all documentation for that resource will be recorded.

Stabilization (treatment). The act or process of applying measures designed to establish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property, or one which has the potential to deteriorate or to become unsafe, while maintaining the essential form as it exists at present.

State Historic Preservation Officer (SHPO). See Officer.

State Historic Resources Inventory. Compilation of all identified and evaluated historical resources maintained by the State Office of Historic Preservation. It includes all those historical resources evaluated in surveys that were conducted in accordance with criteria established by the Office (see Appendix B) and were thereafter determined eligible for, or listed in, the National Register of Historic Places or designated as California Registered Historical Landmarks, California Points of Historical Interest, or the California Register of Historical Resources.

State Historical Building Code (SHBC). The State Historical Building Code is contained in Part 8 of Title 24 (State Building Standards Code) and applies to all qualified historical structures, districts, and sites designated under federal, state, or local authority. It provides alternatives to the Uniform Building Code in cases consistent with building regulations for the rehabilitation, preservation, restoration, or relocation of qualified historic structures designated as historic buildings.

State Historical Landmarks. The California Registered Historical Landmarks Program (Cal. Pub. Res. Code Section 5021) is a state historical resources registration program which was created in 1949 to recognize historical resources with regional and statewide significance to the history of California

State Historical Resources Commission (SHRC). Commission appointed by the Governor under Public Resources Code Section 5020.4 and 5020.5. The SHRC has broad responsibilities for the statewide historic preservation program that include conducting a statewide inventory of historical resources, establishing criteria for evaluating historical resources, and conducting public hearings to develop and review a statewide historical resources plan.

Statement of Significance. An organizational format which groups information about related historical resources based on theme, geographic units, and chronological period. The information should describe why the resource is significant within a relevant historic context.

Structure. A construction made for a functional purpose rather than creating human shelter. Examples of structures include mines, bridges, and funnels.

T

Tax Certification. A provision of federal tax law which, under certain conditions, allows money invested in capital rehabilitation to be deducted from income taxes owed. See those provisions for certified National Register structure which are included in the Economic Recovery Act of 1981 (Internal Revenue Code Section 48, 168, 170, and 280B).

Traditional Cultural Properties. A geographic area or historical resource that embodies important cultural values. It may contain landscape characteristics that are the tangible evidence of the activities and habits of the people who occupied, developed, and shaped the land to serve their needs, or it may include several categories of properties. It may also con-

tain, or consist primarily of, natural features which are important in a religious or belief system.

U

UTM Coordinates. A set of metric coordinates (easting and northing) that indicate a unique location according to the **Universal Transverse Mercator** grid appearing on maps of the United States Geological Survey.

Chapter 11.7. Recreational Trails Program

§ 4860. Recreational Trails Program.

Applicants who wish to participate in the Recreational Trails Program must comply with the Procedural Guide for the federal Recreational Trails Program Final June 4, 2007.

The Procedural Guide for the federal Recreational Trails Program Final June 4, 2007 is incorporated by reference.

NOTE: Authority cited: Sections 5003 and 5072.8(c), Public Resources Code. Reference: Section 5072.8, Public Resources Code; and Title 23, United States Code, Sections 104(h) and 206.

HISTORY

1. New chapter 11.7 (section 4860) and section filed 7–15–2008; operative 8–14–2008 (Register 2008, No. 29).

Chapter 12. Land and Water Conservation

§ 4900. Definitions.

As used in these regulations, the terms listed below shall have the meanings noted:

(a) Act. "Act" means the Land and Water Conservation Fund Act of 1965, 78 Stat. 897, authorizing the Secretary of the Interior to provide financial assistance to the State for outdoor recreation purposes.

(b) Bureau. "Bureau" means the Bureau of Outdoor Recreation, U.S. Department of the Interior.

(c) Fund. "Fund" means the Land and Water Conservation Fund, created by the Land and Water Conservation Fund Act of 1965, and monies made available there from to the State of California.

(d) Program. "Program" means the Land and Water Conservation Fund Program under which monies are made available through the State Liaison Officer to state and local agencies for outdoor recreation purposes.

(e) State Liaison Officer. "State Liaison Officer" means the state officer designated by the Governor to administer the Land and Water Conservation Fund and Program for the State of California. The State Director of Parks and Recreation has been so designated and given authority by the State Legislature to serve as the State Liaison Officer.

(f) Department. "Department" means the Department of Parks and Recreation.

(g) Applicant. "Applicant" means any public agency or political subdivision of the State eligible for, and applying for, assistance under this Program. For the purposes of this Program, eligible State agencies are the Departments of Fish and Game, Navigation and Ocean Development, Parks and Recreation and Water Resources. Eligible local agencies are cities, counties, recreation and park districts and certain special districts whose authority permits the acquisition, development, operation and maintenance of public parks and recreation areas.

(h) Annual Apportionment. "Annual Apportionment" means that amount of funds allocated during any one fiscal year by the Secretary of the Interior and made available to the State of California under this Program.

HISTORY

1. Repealer of subsection (i) filed 6–26–75; effective thirtieth day thereafter (Register 75, No. 26).

§ 4901. Authority.

Articles 1 through 3, Chapter 1.9, Division 5 (Sections 5099 through 5099.11) of the Public Resources Code and other provisions of law provide the authority to enable the state and its local governmental agencies and subdivisions to participate in the Program, instruct the Director to maintain and keep up to date a comprehensive plan for the development of the outdoor recreation resources of the State and give the Director the authority to administer the Program.

§ 4902. Allocation of Funds.

The annual apportionment will be allocated among state and local agencies in such proportions as may be determined by the State Liaison Officer, acting in accord with applicable rules and regulations established by the Bureau and other provisions of law. The following principles shall generally apply to this allocation:

(a) That part of the annual apportionment made available to local agencies shall be allocated among eligible projects in accordance with the needs and priorities established by the California Outdoor Recreation Resources Plan and the requirements hereof.

(b) Funds for statewide planning purposes shall be allocated to state agencies only.

(c) Up to 10 percent of the current annual apportionment may be reserved, at the discretion of the State Liaison Officer, for contingency purposes. These contingency purposes may include unanticipated increases in project costs and for special projects for which matching funds become unexpectedly available, or for which matching funds will expire. All contingency funds unexpended in any one fiscal year shall be added to and allocated in the general annual allocation the following fiscal year. Funds retained for contingency purposes need not conform to the provisions of Sections 4903 and 4904 herein.

§ 4903. Project Criteria.

Projects for which applications are submitted must meet criteria established by the Heritage Conservation and Recreation Service as set forth in the Service's Grants–In–Aid Manual and amendments thereto. They must also meet the following Eliminating and Ranking Criteria:

(a) Eliminating Criteria. The eliminating criteria are applied to determine whether or not the project is eligible. In order to be considered further, the applicant must meet all of the following:

(1) As of the annual deadline, a substantially complete application must be submitted or your project will not be considered for funding. Applications which are technically complete in all aspects by the deadline will receive bonus points. A technically complete application is defined in the most current Procedural Guide, Part 1, Application Procedures. If the application is not technically complete in all aspects as of the date that the State Liaison Officer selects projects (usually in November), the application will not be considered eligible for funding.

(2) As of the annual deadline, the applicant must have an assured source of eligible matching funds. The matching funds are defined as any and all funds available to the applicant not derived from the Wildlife Restoration Fund, Harbors and Watercraft Revolving Fund, and the California Water Resources Development Bond Fund.

(3) As of the annual deadline, the applicant must have adequate tenure to the land to be developed (development projects only). (Adequate tenure will consist of either fee title, without encumbrances which would have an adverse effect on the project, or a fully executed lease or easement of sufficient duration and adequate to receive full value from the project facilities developed by the grant).

(4) The project for which grant funds are requested must increase the project's ability or capacity to serve outdoor recreation purposes.

(b) Ranking Criteria. The second level of the selection process involves the application of ranking criteria to those proposals that survive the elimination process.

In implementing this process, State Law (Chapter 986, Statutes of 1977) requires that the Local Agency share be split in a *Statewide* ratio of 50% to regional projects, and 50% less–than–regional projects. For the purposes of program administration, projects will be classified as either

regional or less–than–regional and compete separately within each planning district for one–half of the Planning District allocation. Several factors will be considered in the determination of the regional/less–than–regional designations:

Acreage. *In general*, a project of 50 acres or more will be considered regional, less than 50 acres will be considered less–than–regional. Acreage alone will not be the deciding factor. In some cases a less than 50 acre site may be classified as a regional project and a 50 acre or larger site may be considered less–than–regional.

Physical Characteristics. The presence of any significant scenic or resource values would tend to indicate a regional designation.

Intended Use. The proposed facilities and/or purpose of the project will be analyzed to determine whether the project is, or will be upon development, capable of attracting visitors from a community or a regional service area.

The final decision on the regional/less–than–regional designation of a project will be based on these factors and be made by the State.

If the dollar amount of all projects is greater than the available funds within each planning district, they will be evaluated and ranked according to the following criteria (conversely if there are more funds available to a planning district than required, the projects will not necessarily be funded unless they are considered high priority by the State Liaison Officer):

(1) Development grant requests for facilities that are to be constructed at a recreation area that provide opportunities for multiple recreational activities (two or more separate and distinct activities) will be given a higher priority than grant requests for projects that provide activities for a single purpose or specialized uses that serve only a limited segment of the public.

(2) Development grant requests for projects that will provide for basic facilities will be given a higher priority than grant requests that will provide for more elaborate facilities. Elaborate facilities are defined as overly ornate, overdesigned, superfluous, or otherwise excessive. It is not the intent of this criterion to discourage high–quality, innovative projects.

(3) Development grant requests for projects that will provide new facilities and opportunities in either new or old parks will be given higher priority than grant requests for projects that will provide for the replacement or rehabilitation of existing usable recreational facilities.

(4) Grant requests for projects that, in the judgment of the State Liaison Officer and his staff, can be completed expeditiously (generally 2 1/2 years) will be given higher priority. Points will not be awarded to other projects not meeting this criteria.

Factors considered to determine an applicant's ability to complete a project will include, but not be limited to: The applicant's performance on previous grant projects, both federal and state; the applicant's ability to operate and maintain existing parks; involvement of other jurisdictions and regulatory agencies; public involvement; the steps already taken to implement the project at the time of application; the magnitude and complexity of the project.

(5) Grant requests from public entities, who have designated a major organizational unit with a full–time primary responsibility for the provision of parks and recreation areas and/or facilities, will be given higher priority than requests from governmental units whose primary function is other than parks and recreation.

(6) Acquisition grant requests from an applicant that has a preliminary title report by the annual application deadline will be given a higher priority.

(7) Grant requests for projects that will serve the greatest need will be given high priority. Regional projects will be evaluated separately from less–than–regional projects. Competing projects will be evaluated against the following criteria:

(A) For Regional Projects:

1. Population Density. Priority will be given to projects that serve high density residential areas. The population residing within the effective service radius will be used for evaluation. The effective service radius will be uniformly applied within each planning district.

2. Proximity of Population Masses to Project. Priority will be given to projects that are in closest proximity to densely populated areas as compared to other competing projects.

3. Developed Facilities. Priority will be given to projects that serve areas with the least number of existing developed facilities per 1,000 population (use–features) within the effective service radius. (Development projects only).

4. Park Acres. Priority will be given to projects that serve areas with the least amount of existing comparable recreational acreage per 1,000 population within the effective service radius. (Acquisition projects only).

5. Access. Priority will be given to projects that are readily accessible from freeways, expressways, major routes of recreation travel or public transportation.

(B) For Less–Than–Regional Projects:

1. Population Density. Priority will be given to projects that serve the highest population densities. Population residing within a one–mile radius of less–than–regional projects will be used.

2. Access. Priority will be given to projects that provide for the best public access. This will be judged by the adequacy of public transportation services and the presence of physical barriers (freeways, railroad tracks, flood control channels, etc.) that may restrict immediate access.

3. Developed Facilities. Priority will be given to projects that serve areas with the least number of existing developed facilities (use features) within the appropriate service area of the proposed project. Only recreation facilities of the same nature as those contemplated in the proposed grant project will be considered. (Development projects only).

4. Park Acres. Priority will be given to projects that serve the least number of existing recreation acreage within the appropriate service area of the proposed project. (Acquisition projects only).

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5. Low Income Areas. Priority will be given to projects that serve the outdoor recreation needs of low income families.

(c) Additional S.L.O. Selection Factors: The above seven ranking criteria will be applied to all eligible projects. Although a final score will be determined for each competing project, that score may not necessarily be the sole factor in determining the funding of a project. The final decision to fund a project will be based upon informed judgement and at the discretion of the State Liaison Officer. The following additional factors will be taken into consideration to determine the final rating of a project.

Generally, preference will be given by the S.L.O. to projects:

(1) Which have a reasonable cost/benefit ratio.

(2) Where there is an urgency for acquisition and where delay will cause a loss of recreation opportunities in the future.

(3) Which relate directly to state and planning district priority for Land and Water Conservation Funds in CORRP.

(4) Where the applicant has not been previously funded. Also, where the per capita share of Land and Water Conservation Funds in the county where the project is located is less than the State's per capita average.

(5) Where the dollar amount requested is reasonable in relation to the total dollars available to the planning district.

(6) Where a greater geographical spreading of funds will be achieved within a planning district.

(7) Where the applicant has an adopted master plan of park and recreation areas that includes the project for which funds are being sought.

(8) Which have innovative and/or unique, natural, or scenic features.

(9) Which make provisions for handicapped and underprivileged, above and beyond those required by law.

(10) Which have the ability to attract visitation from beyond the applicants normal service area.

NOTE: Authority cited: Section 5003, Public Resources Code.

HISTORY

1. Repealer and new section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8). For prior history, see Register 75, No. 26.
2. Repealer and new section filed 7–27–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 4904. Priorities Among Eligible Projects.

Projects adhering to federal criteria and meeting the criteria set forth in Section 4903 will be selected for submission to the Bureau for funding as follows: (a) Equal consideration will be given urban and rural areas. (b) Equal consideration will be given to the funding of state and local agencies.

(a) Within the funds made available to individual state agencies by the State Liaison Officer, each eligible state agency will determine those projects for which applications will be submitted to the Bureau.

(b) Within the funds made available for local projects by the State Liaison Officer and in accordance with paragraph (a) of Section 4902, the State Liaison Officer will select from the applications submitted by local agencies those projects for which applications will be submitted to the Bureau.

APPLICATIONS FOR ASSISTANCE

§ 4910. Application Format.

Applications for assistance under this Program shall be prepared in such format and contain such information as the State Liaison Officer shall determine. Procedure guides for preparation of such applications shall be made available upon request from interested agencies.

§ 4911. Submission of Applications.

Applications shall be submitted by such deadlines as may be established by the State Liaison Officer.

(a) All eligible state and local agencies will be notified of such deadline.

AVAILABILITY AND DISBURSEMENT OF FUNDS

§ 4920. Availability and Disbursement of Funds.

Funds available under this program shall be disbursed pursuant to the terms and conditions of a contract, called a Project Agreement, between the State Liaison Officer and the applicant. The Project Agreement is a document separate from the application and the form thereof shall be determined by the State Liaison Officer.

Chapter 13. Roberti–Z'berg Urban Open Space and Recreation Program

§ 4930. Application; Form and Content.

Applications for both block grants and grants based upon need shall be prepared and submitted as set forward in the "Procedural Guide and Program Criteria for the Roberti–Z'berg Urban Open–Space and Recreation Program," as published from time to time by the Department of Parks and Recreation.

NOTE: Authority cited: Sections 5620–5632, Public Resources Code. Reference: Sections 5620–5632, Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).
2. Editorial correction relocating Sections 4930–4935 from Chapter 12 to Chapter 13 (Register 77, No. 28). For former language of Chapter 13, see Register 74, No. 25.

§ 4931. Resolution of Applicant's Governing Body.

An applicant shall include with the application one copy of its resolution authorizing the application to be made and specifying its agents for negotiation and execution of grant documents.

NOTE: Authority cited: Sections 5620–5632, Public Resources Code. Reference: Sections 5620–5632, Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).

§ 4932. Certification by Legal Counsel.

The application shall include the certifications by legal counsel required by Public Resources Code Section 5626(c).

NOTE: Authority cited: Section 5625, Public Resources Code. Reference: Section 5626(c), Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).
2. Amendment filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21).

§ 4933. Compliance with CEQA.

Documents prepared by an applicant in conformance with the California Environmental Quality Act shall be submitted to the State Clearinghouse prior to or at the same time as the application is filed.

NOTE: Authority cited: Sections 5620–5632, Public Resources Code. Reference: Sections 5620–5632, Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).

§ 4934. Reports to State.

Grant recipients shall submit reports of the grant annually on a date to be specified by the Department, including, but not limited to, the percentages of grant funds expended, the percentage of projects completed with description of the completed portions and any departures from the project schedule set forward in the application, with the reasons therefor.

NOTE: Authority cited: Sections 5620–5632, Public Resources Code. Reference: Sections 5620–5632, Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).

§ 4935. Matching with Goods and Services.

Grants for development may be matched by non–monetary contributions of goods and services supplied by the applicant, a third person, or by gift.

(a) Goods in the form of equipment, whether applicant owned, purchased, leased, or donated will be valued on a use basis in accordance with actual costs of purchase or lease or on a depreciation schedule in accordance with applicant's normal accounting practices or prevailing costs of goods if donated. Equipment rental rates adopted by the California Department of Public Works may be used as a guide. Residual market value of purchased equipment shall be credited to projects costs upon completion.

(b) Goods in the form of supplies and material will be valued at either actual direct costs to applicant or, if capitalized as part of a structure or item of equipment used on the project, that cost reasonably attributable to the projects, or if donated according to prevailing costs.

(c) Services will be valued in the actual amounts of salaries, wages and direct overhead costs, expended on the project.

(d) Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved project. Records of in-kind contributions of personnel shall include time sheets containing the signature of the person whose time is contributed and of his supervisor verifying that the record is accurate.

(e) Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State. The time of a person donating his services will be valued at the rate paid as a general laborer unless he is professionally skilled in the work he is performing on the project (i.e., plumber doing work on pipes, mason doing work on a brick building). When this is the case, the wage rate this individual is normally paid for performing his service may be charged to the project. A general laborer's wages may be charged in the amount of that which the city or cities in the immediate area pay their city employees for performing similar duties.

NOTE: Authority cited: Sections 5620–5632, Public Resources Code. Reference: Sections 5620–5632, Public Resources Code.

HISTORY

1. New section filed 2–16–77; effective thirtieth day thereafter (Register 77, No. 8).

Chapter 14. California Exposition and State Fair (Cal–Expo)

§ 4950. Definitions.

(a) "Director," as used herein, means Director of Parks and Recreation of the State of California.

(b) "General Manager" means the General Manager of the California Exposition and State Fair.

(c) "Cal–Expo" means the California Exposition and State Fair.

(d) "Person," as used herein, shall be construed to mean and include natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

(e) "Animal" is any animate being not human, which is endowed with the power of voluntary motion.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

HISTORY

1. New Sections 4950–4961 filed 5–25–79; effective thirtieth day thereafter (Register 79, No. 21). For prior history, see Register 78, 33; 79, 10.

§ 4951. Use of Facilities, Payment.

No person shall use or occupy the grounds or facilities for the use of which a fee has been established by the General Manager, unless he has first paid such fee. This shall not apply to state officers and employees on official business nor to persons excepted by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4952. Litter.

No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes, waste paper, cans, or other litter on the premises of Cal Expo except in a receptacle designed for that purpose.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4953. Fires.

No person shall light, build, use, or maintain a fire on the premises of Cal Expo unless authorized by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4954. Dogs; Animals.

(a) No person shall bring, permit to enter, or possess a dog or other animal on the premises of Cal Expo unless authorized in writing by the General Manager.

(b) A dog or other animal authorized on the premises of Cal Expo shall be on a leash of no more than six feet in length and under the immediate control of a person or confined to a vehicle unless authorization is to the contrary.

(c) A person authorized to bring or possess a dog on the premises of Cal Expo shall present proof that the dog has a valid license or rabies inoculation, except for dogs under five months old.

(d) No person authorized to possess a dog or other animal on the premises of Cal Expo shall not permit it to remain outside a trailer, mobile home, recreational vehicle, or other enclosure during the night.

(e) Subsections (a) and (b) shall not apply to a "seeing eye" dog used to guide a blind person there present, provided that the dog remains under the immediate control of the blind person and is not disturbing to other persons.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4955. Dangerous Weapons.

No person shall carry or transport, in any manner, dangerous weapons or articles in or upon the buildings or grounds of Cal Expo. Such weapons or articles shall include, but not be limited to, any instrument commonly known as a blackjack, sling shot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, a pistol, revolver, or any other firearm, any knife having a blade longer than four inches, any razor with an unguarded blade and any metal pipe or bar, and any substance which can be exploded or burned in a manner which might produce bodily injury or damage to Cal Expo properties. The prohibitions of this section do not apply to persons carrying or transporting such items in connection with their duties as State employees or to persons conducting any other legitimate business, or service on Cal Expo premises.

All such items shall be confiscated and shall not be returned until the person carrying or transporting such items leaves the buildings and grounds of Cal Expo.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4956. Assembly.

No person shall conduct or attend an assembly or public demonstration unless approved by the General Manager upon a finding that such activity would not substantially interfere with the use of the Cal Expo facilities by the general public.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4957. Closing.

No person shall enter or be present in any portion of Cal Expo after closing hours or in any area designated closed, unless authorized by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4958. Alcoholic Beverages.

No person shall possess or consume any alcoholic beverage on the premises of Cal Expo which was not obtained from an authorized concessionaire located at Cal Expo unless authorized in writing by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4959. Soliciting.

No person shall solicit, sell, hawk, or peddle any goods, wares, merchandise, liquids, or edibles for human consumption or distribute circulars on the premises of Cal Expo, unless authorized in writing by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4960. Speed Limit.

No person shall drive a vehicle within the grounds of Cal Expo at a speed greater than is reasonable or prudent, having due regard for the traffic on, and the surface and width of, the road, and in no event at a speed which endangers the safety of persons, property, or animals, provided however, that in no event shall a vehicle be driven at a speed greater than 15 miles per hour.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

§ 4961. Vehicles—Operation, Stopping, Parking, Removal by Peace Officers.

(a) No person shall operate any vehicle, negligently or willfully in such a manner as to harass, endanger, or injure any person or animal.

(b) No person shall operate, stop or park a vehicle, except on a designated road or parking area, nor operate or park a vehicle on the premises of Cal Expo after closing hours.

(c) Any peace officer with concurrent jurisdiction on the premises of Cal Expo or any member of the California Highway Patrol or any Cal Expo peace officer is authorized to cause the removal of a vehicle from the premises of Cal Expo under the provision of the Vehicle Code including, but not limited to, Section 22659, or Cal Expo regulations contained herein.

(d) All individuals operating vehicles on the grounds of Cal Expo shall be properly licensed to operate such vehicles in accordance with the California Vehicle Code. The General Manager may authorize certain types of vehicles to be operated on the grounds of Cal Expo by other than licensed operators.

(e) No person shall operate or ride a bicycle, scooter, skateboard or other operator–propelled device on the grounds of Cal Expo unless authorized in writing by the General Manager.

NOTE: Authority cited: Food and Agricultural Code, Section 3324.

Chapter 15. Off–Highway Vehicle Grant Program Regulations

Article 1. General Provisions

§ 4970. Application of Chapter 15.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.64(1) and (2), 5090.04, 5090.05, 5090.10 and 5090.11, Public Resources Code.

HISTORY

1. New chapter 15 (articles 1–8, sections 4970–4970.30), article 1 (sections 4970–4970.1) and section filed 8–26–99 as an emergency; operative 8–26–99 (Register 99, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–24–99 or emergency language will be repealed by operation of law on the following day.
2. New chapter 15, (articles 1–8, sections 4970–4970.30), article 1 (sections 4970–4970.1) and section refiled 12–16–99 as an emergency; operative 12–16–99 (Register 99, No. 51). A Certificate of Compliance must be transmitted to OAL by 4–14–2000 or emergency language will be repealed by operation of law on the following day.
3. New chapter 15, (articles 1–8, sections 4970–4970.30), article 1 (sections 4970–4970.1) and section refiled 4–14–2000 as an emergency; operative 4–14–2000 (Register 2000, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–14–2000 or emergency language will be repealed by operation of law on the following day.
4. Repealer of chapter 15 (articles 1–8, sections 4970–4970.30) by operation of Government Code section 11346.1(g) (Register 2000, No. 37).
5. Amendment of chapter heading filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
6. Amendment of chapter heading refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
7. Amendment of chapter heading refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
8. Refiling of emergency amendments to chapter heading and new section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of chapter heading and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of chapter heading as it existed prior to 7–31–2006 emergency amendment by operation of Government Code section 11346.1(f) and repealer of section by operation of Government Code section 11346.1(g) (Register 2007, No. 19).

§ 4970.00. Definitions.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 4442, 4442.5, 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.51(b) and 5090.64(b)(1) and (2), Public Resources Code; Sections 111, 400, 436, 38000, 38001, 38006, 38012 and 38225(c), Vehicle Code; 42 U.S.C. 4371; 43 U.S.C. 1601–1624; 40 CFR part 1500.1 et seq.; and Section 501(c)(3), U.S. Internal Revenue Code.

HISTORY

1. New chapter 15 (articles 1–8, sections 4970–4970.31), article 1 (sections 4970.00–4970.01) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Amendment of section and NOTE filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and NOTE refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.01. Program Purpose.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.02 and 5090.32(d), Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be trans-

mitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Amendment of section and NOTE filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and NOTE refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.02. Commission's Annual Program Review Meeting.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.24(f) and 5090.32, Public Resources Code.

HISTORY

1. New article 2 (sections 4970.02–4970.08) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section heading and subsections (b)(1) and (b)(5), new subsections (f)–(f)(6) and amendment of NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section heading and subsections (b)(1) and (b)(5), new subsections (f)–(f)(6) and amendment of NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 2 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 2 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 2 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 2 heading and repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 2 heading and repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.03. General Application Requirements.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50, 5090.51 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of subsection (a), new subsection (c)(7), amendment of subsections (f) and (k), repealer of subsections (k)(1)–(m) and amendment of NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of subsection (a), new subsection (c)(7), amendment of subsections (f) and (k), repealer of subsections (k)(1)–(m) and amendment of NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

Article 2. Types of Projects and Specific Application and Content Requirements

§ 4970.04. Acquisition Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32 and 5090.50, Public Resources Code; Title 1, Division 7, Chapter 16, Section 7260 et seq., Government Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section heading, section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section heading, section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. New article 2 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. New article 2 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. New article 2 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. New article 2 heading and repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.

10. New article 2 heading and repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer of article 2 (sections 4970.04–4970.09) and section filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.05. Development Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code; Public Law 101–336, July 26, 1990, 104 Stat. 327.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.06. Equipment Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.07. Facilities Operation and Maintenance (FO&M) Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resource Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section heading, section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section heading, section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.08. Law Enforcement Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.64(b)(2), Public Resources Code; and Section 38000, Vehicle Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment of section and NOTE filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Amendment of section and NOTE refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be trans-

mitted to OAL by 8-9-2005 or emergency language will be repealed by operation of law on the following day.

7. Repealer and new section refiled 8-8-2005 as an emergency; operative 8-8-2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12-6-2005 as an emergency; operative 12-6-2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-5-2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7-31-2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5-7-2007; operative 5-7-2007 (Register 2007, No. 19).

§ 4970.09. OHV Safety or Education Program Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9-14-2000; operative 9-14-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.09 to section 4970.10 and new section 4970.09 filed 4-7-2003 as an emergency; operative 4-7-2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4-7-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.09 to section 4970.10 and new section 4970.09 refiled 8-8-2003 as an emergency; operative 8-8-2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-8-2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-8-2003 order transmitted to OAL 11-17-2003 and filed 12-31-2003 (Register 2004, No. 1).
6. Repealer and new section filed 4-11-2005 as an emergency; operative 4-11-2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-9-2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8-8-2005 as an emergency; operative 8-8-2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12-6-2005 as an emergency; operative 12-6-2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-5-2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7-31-2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5-7-2007; operative 5-7-2007 (Register 2007, No. 19).

§ 4970.10. Planning Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5024.1, 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New article 3 (sections 4970.09-4970.15) and section filed 9-14-2000; operative 9-14-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.10 to section 4970.11 and renumbering of former section 4970.09 to section 4970.10, including amendment of section and NOTE, filed 4-7-2003 as an emergency; operative 4-7-2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4-7-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.10 to section 4970.11 and renumbering of former section 4970.09 to section 4970.10, including amendment of section and NOTE, refiled 8-8-2003 as an emergency; operative 8-8-2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-8-2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-8-2003 order, including further amendment of subsection (a), transmitted to OAL 11-17-2003 and filed 12-31-2003 (Register 2004, No. 1).
6. Repealer of former article 3 heading and repealer and new section filed 4-11-2005 as an emergency; operative 4-11-2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-9-2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 3 heading and repealer and new section refiled 8-8-2005 as an emergency; operative 8-8-2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 3 heading and repealer and new section refiled 12-6-2005 as an emergency; operative 12-6-2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-5-2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 3 heading and repealer and new section refiled 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 3 heading and repealer and new section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7-31-2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5-7-2007; operative 5-7-2007 (Register 2007, No. 19).

§ 4970.11. Resource Management Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9-14-2000; operative 9-14-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.11 to section 4970.12 and renumbering of former section 4970.10 to section 4970.11, including amendment of section and NOTE, filed 4-7-2003 as an emergency; operative 4-7-2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4-7-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.11 to section 4970.12 and renumbering of former section 4970.10 to section 4970.11, including amendment of section and NOTE, refiled 8-8-2003 as an emergency; operative 8-8-2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-8-2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-8-2003 order transmitted to OAL 11-17-2003 and filed 12-31-2003 (Register 2004, No. 1).
6. Repealer and new section filed 4-11-2005 as an emergency; operative 4-11-2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-9-2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8-8-2005 as an emergency; operative 8-8-2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12-6-2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12-6-2005 as an emergency; operative 12-6-2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-5-2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7-31-2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5-7-2007; operative 5-7-2007 (Register 2007, No. 19).

§ 4970.12. Restoration Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.64(a), Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.12 to section 4970.13 and renumbering and amendment of former section 4970.11 to section 4970.12 filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.12 to section 4970.13 and renumbering and amendment of former section 4970.11 to section 4970.12 refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.13. Studies And Scientific Research Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.13 to section 4970.14 and renumbering of former section 4970.12 to section 4970.13, including amendment of section heading, section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.13 to section 4970.14 and renumbering of former section 4970.12 to section 4970.13, including amendment of section heading, section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.14. Trail Maintenance, Trail Conservation, and Trail Reroute Projects.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.14 to section 4970.15 and renumbering of former section 4970.13 to section 4970.14, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.14 to section 4970.15 and renumbering of former section 4970.13 to section 4970.14, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

Article 3. Environmental and Match Requirements

§ 4970.15. CEQA Requirements.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50(g), Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.15 to section 4970.16 and renumbering of former section 4970.14 to section 4970.15, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.15 to section 4970.16 and renumbering of former section 4970.14 to section 4970.15, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by

12–8–2003 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. New article 3 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. New article 3 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. New article 3 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. New article 3 heading and repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. New article 3 heading and repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer of article 3 (sections 4970.15–4970.18) and section filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.16. Wildlife Habitat Protection Program (WHPP) / Habitat Management Program (HMP).

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New article 4 (sections 4970.16–4970.22) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.16 to section 4970.17 and renumbering of former section 4970.15 to section 4970.16, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.16 to section 4970.17 and renumbering of former section 4970.15 to section 4970.16, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.17. Soil Conservation Program.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.17 to section 4970.18 and renumbering of former section 4970.16 to section 4970.17, including amendment of section heading, section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.17 to section 4970.18 and renumbering of former section 4970.16 to section 4970.17, including amendment of section heading, section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 4 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 4 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 4 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 4 heading and repealer and new section refiled, including amendments to subsection (d), 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 4 heading and repealer and new section refiled, including amendments to subsection (d), 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.18. Match Requirements.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.51, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.18 to section 4970.19 and renumbering of former section 4970.17 to section 4970.18, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.18 to section 4970.19 and renumbering of former section 4970.17 to section 4970.18, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be trans-

mitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.

10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

Article 4. Application Evaluation System

§ 4970.19. Application Evaluation System.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.24 and 5090.32, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.19 to section 4970.20 and renumbering of former section 4970.18 to section 4970.19, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.19 to section 4970.20 and renumbering of former section 4970.18 to section 4970.19, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. New article 4 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. New article 4 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. New article 4 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. New article 4 heading and repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. New article 4 heading and repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer of article 4 (sections 4970.19–4970.20) and section filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.20. Commission Allocation of Funds and Approval of Grants and Cooperative Agreements Program Applications.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.61, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.20 to section 4970.21 and renumbering of former section 4970.19 to section 4970.20, including amendment of NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.20 to section 4970.21 and renumbering of former section 4970.19 to section 4970.20, including amendment of NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

Article 5. Accounting, Annual Audits and Performance Reviews, and Site Visits

§ 4970.21. Accounting, Annual Audits and Performance Reviews, and Site Visits.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.21 to section 4970.22 and renumbering of former section 4970.20 to section 4970.21, including amendment of NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.21 to section 4970.22 and renumbering of former section 4970.20 to section 4970.21, including amendment of NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. New article 5 heading and repealer and new section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. New article 5 heading and repealer and new section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. New article 5 heading and repealer and new section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. New article 5 heading and repealer and new section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. New article 5 heading and repealer and new section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer of article 5 (sections 4970.21–4970.32) and section filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.22. Operation and Maintenance of OHV–Funded Facilities.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.51, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.22 to section 4970.23 and renumbering of former section 4970.21 to section 4970.22, including amendment of NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.22 to section 4970.23 and renumbering of former section 4970.21 to section 4970.22, including amendment of NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.23. Use of OHV–Funded Facilities.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.51, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.23 to section 4970.24 and renumbering of former section 4970.22 to section 4970.23, including amendment of subsection (f) and amendment of NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.23 to section 4970.24 and renumbering of former section 4970.22 to section 4970.23, including amendment of subsection (f) and amendment of NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.24. Project Agreement.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New article 5 (sections 4970.23–4970.25) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.24 to section 4970.25 and renumbering of former section 4970.23 to section 4970.24, including amendment of article heading, section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.24 to section 4970.25 and renumbering of former section 4970.23 to section 4970.24, including amendment of article heading, section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 5 heading and repealer of section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 5 heading and repealer of section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 5 heading and repealer of section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 5 heading and repealer of section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 5 heading and repealer of section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.25. Amendment to Project Agreement.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.25 to section 4970.26 and renumbering of former section 4970.24 to section 4970.25, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.25 to section 4970.26 and renumbering of former section 4970.24 to section 4970.25, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).

6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.26. Re–Scope of Project Agreement.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New article 6 (section 4970.26) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.26 to section 4970.27 and renumbering of former section 4970.25 to section 4970.26, including amendment of section heading, section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.26 to section 4970.27 and renumbering of former section 4970.25 to section 4970.26, including amendment of section heading, section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.27. Annual Application Review Meetings.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.24 and 5090.32, Public Resources Code.

HISTORY

1. New article 7 (section 4970.27) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.27 to section 4970.28 and renumbering of former section 4970.26 to section 4970.27, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.27 to section 4970.28 and renumbering of former section 4970.26 to section 4970.27, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 6 heading and repealer of section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 6 heading and repealer of section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 6 heading and repealer of section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 6 heading and repealer of section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 6 heading and repealer of section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.28. Application Guide – General.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New article 8 (sections 4970.28–4970.31) and section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.28 to section 4970.29 and renumbering of former section 4970.27 to section 4970.28, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.28 to section 4970.29 and renumbering of former section 4970.27 to section 4970.28, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 7 heading and repealer of section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 7 heading and repealer of section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 7 heading and repealer of section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 7 heading and repealer of section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 7 heading and repealer of section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.

11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.29. Accounting, Audits, and Annual Performance Review – General.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.29 to section 4970.30 and renumbering of former section 4970.28 to section 4970.29, including amendment of article heading, section heading, section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.29 to section 4970.30 and renumbering of former section 4970.28 to section 4970.29, including amendment of article heading, section heading, section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer of former article 8 heading and repealer of section filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer of former article 8 heading and repealer of section refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer of former article 8 heading and repealer of section refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer of former article 8 heading and repealer of section refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of former article 8 heading and repealer of section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.30. Project Termination.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.30 to section 4970.31 and renumbering of former section 4970.29 to section 4970.30, including amendment of NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.30 to section 4970.31 and renumbering of former section 4970.29 to section 4970.30, including amendment of NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.31. Conservation and Enforcement Services Account.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50, 5090.53 and 5090.64, Public Resources Code; Section 8352.8, Revenue and Taxation Code; and Sections 38000 and 38370, Vehicle Code.

HISTORY

1. New section filed 9–14–2000; operative 9–14–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Renumbering of former section 4970.31 to section 4970.32 and renumbering of former section 4970.30 to section 4970.31, including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
4. Renumbering of former section 4970.31 to section 4970.32 and renumbering of former section 4970.30 to section 4970.31, including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
6. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
11. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
12. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

§ 4970.32. Evaluation Criteria.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.23, 5090.24(f), 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. Renumbering of former section 4970.31 to section 4970.32 , including amendment of section and NOTE, filed 4–7–2003 as an emergency; operative 4–7–2003 (Register 2003, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–2003 or emergency language will be repealed by operation of law on the following day.
2. Reinstatement of section as it existed prior to 4–7–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2003, No. 32).
3. Renumbering of former section 4970.31 to section 4970.32 , including amendment of section and NOTE, refiled 8–8–2003 as an emergency; operative 8–8–2003 (Register 2003, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2003 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 8–8–2003 order transmitted to OAL 11–17–2003 and filed 12–31–2003 (Register 2004, No. 1).
5. Repealer filed 4–11–2005 as an emergency; operative 4–11–2005 (Register 2005, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2005 or emergency language will be repealed by operation of law on the following day.
6. Repealer refiled 8–8–2005 as an emergency; operative 8–8–2005 (Register 2005, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–6–2005 or emergency language will be repealed by operation of law on the following day.
7. Repealer refiled 12–6–2005 as an emergency; operative 12–6–2005 (Register 2005, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–5–2006 or emergency language will be repealed by operation of law on the following day.
8. Repealer refiled 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
9. Repealer refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
10. Repealer of 7–31–2006 order by operation of Government Code section 11346.1(g) (Register 2007, No. 19).
11. Repealer filed 5–7–2007; operative 5–7–2007 (Register 2007, No. 19).

Chapter 15.5. Off–Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program Regulations

Article 1. General Provisions

§ 4970.49. Application of Chapter.

Chapter15.5 applies only to Grant and Cooperative Agreement Applications received by the Off–Highway Motor Vehicle Recreation Division on or after January 1, 2007.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.01–5090.70, Public Resources Code.

HISTORY

1. New chapter 15.5 (articles 1–5, sections 4970.49–4970.72), article 1 (sections 4970.49–4970.53) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New chapter 15.5 (articles 1–5), article 1 (sections 4970.49–4970.53) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New chapter 15.5 (articles 1–5), article 1 (sections 4970.49–4970.53) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including amendment of section and new NOTE, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.50. Definitions.

The words used in this chapter have the following meanings whenever the words are capitalized in this Chapter 15.5:

(a) "Act" means the Off–Highway Motor Vehicle Recreation Act of 2003, as amended, commencing at Public Resources Code Section 5090.01, or any subsequent amended versions.

(b) "Administrative Costs" means the costs of functions performed in support of the Deliverables associated with the Project. Examples of Administrative Costs include, but are not limited to, activities such as personnel providing administrative support directly related to the Project, time keeping, accounting, fiscal management, record keeping and/or purchasing.

(c) "Allocation" means a determination of Funds to be made available for, or an expenditure limit established for, an organizational unit or function, a Project or work activity or Deliverable.

(d) "All–Terrain Vehicle (ATV)" means any vehicle as defined by California Vehicle Code Section 111.

(e) "Applicant" means any of the following that are eligible to apply for funding under the Off–Highway Motor Vehicle Recreation (OHMVR) Division Grants and Cooperative Agreements program:

(1) For a city or county: a department or comparable subdivision;

(2) An Appropriate District;

(3) For the U.S. Forest Service: a Forest or Regional Office;

(4) For the U.S. Bureau of Land Management: a Field, District, or State Office;

(5) For other Federal Agencies: a Field, District, Regional or State Office or similar subdivision;

(6) A Federally Recognized Native American Tribe;

(7) An Educational Institution;

(8) A Nonprofit organization.

(f) "Application" means a compilation of required documents in conformance with these regulations to support a request for funding from the Off–Highway Motor Vehicle Recreation (OHMVR) Division's Grants and Cooperative Agreements program for proposed Project(s).

(g) "Application Instructions" means directions for completing an Application for an OHV Grant or Cooperative Agreement found in Chapter 1 of the Off–Highway Motor Vehicle Recreation Division, Grants and Cooperative Agreements Program, Grants Program Manual dated July 2007.

(h) "Appropriate District" means one that has clear legal responsibility for open space, recreation, parks, and resource–related activities that are land based.

(i) "Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose and usually for a specific period of time.

(j) "Audit" means a comprehensive review in accordance with Generally Accepted Auditing Standards (GAAS), developed by the American Institute of Certified Public Accountants (AICPA) and the Government Auditing Standards issued by the United States General Accounting Office (GAO). The Audit is a review of the Grantee's relevant financial records by the Department of Parks and Recreation Audit Office staff or other Department designee to determine that they support the expenditures authorized in the Project Agreement.

(k) "Buffer" refers to lands or physical barriers acquired or established contiguous to existing or proposed off–highway motor vehicle recreational areas to protect plant and wildlife habitat, soils, view sheds, or reduce noise and other effects to the surrounding lands, for the purpose of sustaining OHV Recreation.

(*l*) "Casual" means non–competitive OHV Recreation.

(m) "CEQA" means the California Environmental Quality Act, Public Resources Code (PRC) Section 21000 et seq.; Title 14, California Code of Regulations (CCR), Division 6, Chapter 3, Article 20.

(n) "Commission" means the Off–Highway Motor Vehicle Recreation (OHMVR) Commission.

(o) "Conservation" means activities, practices, and programs developed and/or implemented in connection with ongoing OHV Recreation that sustain and preserve soils, plants, wildlife and their habitat, and natural and Cultural Resources as referenced in or required by PRC Sections 5090.10, 5090.35, 5090.50, and 5090.53.

(p) "Construction" means the act of building or assembling using different parts, materials, or elements in an ordered manner including, but not limited to, physical barriers, trails, Roads, facilities, hardening of stream crossings, fencing, sediment control structures, and facilities landscaping.

(q) "Cooperative Agreement" means an agreement between the Division and a Federal Agency, or a Federally Recognized Native American Tribe for the purposes authorized and defined in PRC 5090.50 and these regulations.

(r) "Cultural Resources" are associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; are associated with the lives of persons important in our past; embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possess high artistic values; or have yielded, or may be likely to yield, information important in prehistory or history. Cultural Resources also include Historical Resources. Historical Resources include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript that is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California. A resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (PRC Section 5024.1, Title 14 CCR, Section 4852).

(s) "Deliverables" means the specific tangible outcomes or work products to be provided, acquired, or produced with the Funds made available pursuant to the Project Agreement. Examples include the purchase of a specified property, installation of specified erosion control measures, Construction of a restroom, specific hours or days of patrol, Construction of a specified length of fencing, production of a specified number of maps, purchase of specified Equipment, Restoration of a specific area, Maintenance of a specific length of trail, completion of research resulting in a written report, and planning that results in a report or reports including any related specified documents.

(t) "Deputy Director" means the manager of the California Department of Parks and Recreation, OHMVR Division.

(u) "Development" means the Construction of new, and/or improvement of existing, Facilities, Roads, trails, or areas to improve existing or provide additional opportunities, experiences, or services for OHV Recreation.

(v) "Division" means the OHMVR Division of the California Department of Parks and Recreation.

(w) "Division Website" means the internet page of the Department of Parks and Recreation, OHMVR Division at (www.ohv.parks.ca.gov).

(x) "Due Diligence" means to conduct or cause to be conducted an investigation of all aspects of property proposed to be acquired and/or developed using Funds, including investigating the suitability of the property for the intended use, and all critical facts and assumptions used in developing the proposed Project that would assist in evaluating the success of the Project in providing OHV Recreation opportunities and to avoid and/or minimize potential risks that could impair the future sustainability of OHV Recreation.

(y) "Educational Institution" means a public or private preschool, elementary, or secondary school, college or university, or institution; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools in accordance with Section 210.1 of the Education Code.

(z) "Environmental Document" means a document prepared in accordance with the National Environmental Policy Act (NEPA), or the California Environmental Quality Act (CEQA).

(aa) "Equipment" means vehicles, tools, instruments, or apparatus. Equipment includes, but is not limited to: all vehicles, GPS units, sound meters, cameras, radios, first aid kits, computers, and remote-sensing devices that are used in the implementation of a Project. Equipment does not include expendable items such as first aid kit refill supplies, personal safety gear, or tires.

(bb) "Facility" means the assets of an organization that include: buildings, grounds, parking facilities, and structures other than buildings such as shade structures, fences, trash enclosures, cattle guards, etc., and includes the systems that support facilities (fuel, electrical, sewer, water, waste, etc.).

(cc) "Federal Agency" means a unit of the United States government.

(dd) "Federally Recognized Native American Tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village pursuant to Title 25, Code of Federal Regulations (CFR) Section 83.5(a).

(ee) "Fund" means the Off-Highway Vehicle Trust Fund as created by subdivision (c) of Section 38225, CVC.

(ff) "Grant" means an agreement between the Division and a city, county, Appropriate District, Educational Institution, or Nonprofit organization for the purposes as authorized and defined in PRC Section 5090.50 and these regulations.

(gg) "Grantee" means any city, county, Appropriate District, Nonprofit organization, Educational Institution, Federal Agency, or Federally Recognized Native American Tribe receiving OHV Grant or Cooperative Agreement Funds.

(hh) "Grants Program Manual" means the Off-Highway Motor Vehicle Recreation Division, Grants and Cooperative Agreements Program, Grants Program Manual (July 2007) and all its contents and subsequent revisions submitted through the rulemaking process.

(ii) "Maintenance" means the routine, ongoing or periodic work required to ensure Roads, trails, areas, and related facilities used for OHV Recreation and Conservation features (e.g., water diversion features, sediment basins, etc.) for the protection of natural and Cultural Resources that are impacted by OHV Recreation activities, continue to function as intended.

(jj) "Monitoring" means periodic data collection and review to determine if the OHV Project is in compliance with the statutory requirements and program or Project objectives.

(kk) "NEPA" means the National Environmental Policy Act pursuant to United States Code (U.S.C.) Title 42, Section 4371; 40 Code of Federal Regulations (CFR) part 1500.1 et seq.

(*ll*) "Nonprofit" means an organization having tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code.

(mm) "OHV" means an off-highway motor vehicle as specified in CVC Section 38006 and/or street licensed motor vehicle while being used on lands to which CVC Division 16.5 applies.

(nn) "OHV Opportunities" means Roads, trails, or areas on lands that are open to legal OHV Recreation.

(oo) "OHV Recreation" means the activity of driving or riding motorized vehicles for leisure purposes on land to which CVC Division 16.5 applies.

(pp) "Operation" means the use of staff and Equipment to facilitate and/or supervise the proper functioning of an OHV Recreation Road, trail, area or lands and any related visitor or user facilities or services, including the protection of persons, life and property.

(qq) "Performance Review" means the review of a Project to identify any areas where the Division may provide technical advice and consultation to the Grantee to improve any aspect of a program or Project funded by OHV Funds and may include assessing progress toward the accomplishment of Deliverables.

(rr) "Project" means the activities and Deliverables described in the Project Application to be accomplished with funding through a Project Agreement.

(ss) Project Agreement" means a contract executed to formally implement a Project.

(tt) "Project Area" means the physical boundaries within which the activities will be performed and Deliverables will be accomplished as described in the Project Agreement.

(uu) "Regional OHV Facility" means a Facility, primarily for Casual OHV Recreation, providing a wide variety of OHV Opportunities for a wide range of OHV interests, that is 500 or more acres, and with a population of 500,000 or more within a 150-mile radius or three (3) -hour travel time, and with the potential to become financially self-sustaining in accordance with criteria adopted by the Commission pursuant to PRC Section 5090.51(b).

(vv) "Repair" means to fix, mend, make new, or revitalize to a sound condition or condition existing prior to the OHV-related damage, after being damaged.

(ww) "Reroute" means the closure, (if not retained for other non-motorized recreation), and Restoration of an existing segment of a trail or Road and replacement with a new alignment.

(xx) "Restoration" means the completion of all work activities that are necessary to return land, plant communities, and plant covers to conditions comparable to those of surrounding lands, or at least those that existed prior to OHV Recreation when the Road, trail, or area has been closed to OHV Recreation.

(yy) "Roads" include: fire trails, logging Roads, service Roads regardless of surface composition, or other roughly graded trails and Roads upon which vehicular travel by the public is permitted (CVC 38001).

(zz) "Scientific Research" means study and exploration into questions posed by theories and hypotheses, and defined by measurable steps or operations (e.g., sample design, methodology, statistical inferences). Scientific research is used to evaluate, estimate, analyze, and address the possible impact on, or of, OHV Recreation and develop responsive management recommendations.

(aaa) "Snowmobile" means any vehicle as defined in CVC 557.

(bbb) "Soil Conservation Program" means a plan containing a process or processes to anticipate and prevent accelerated and unnatural erosion, as provided for in the "Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91)" or its successor.

(ccc) "Viable Species Composition" means that species found in the Project Area have populations with the estimated numbers and distribution of reproductive individuals to enable their continued existence.

(ddd) "Wildlife Habitat Protection Program (WHPP)" means an animal and plant Habitat Management Program (HMP) designed to sustain a Viable Species Composition for the Project Area, pursuant to PRC Sections 5090.35, 5090.50, and 5090.53.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 4442, 4442.5, 5020.1(j), 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.51(b), 5090.53, 5090.64(b)(1) and (2) and 21000 et seq., Public Resources Code; Sections 111, 400, 436, 557, 38001, 38006, 38012 and 38225(c) Vehicle Code; USC, Title 42, Section 4371; USC, Title 43 Sections 1601 et seq.; 40 CFR part 1500.1 et seq.; 25 CFR Section 83.5(a); Section 210.1, Education Code; and U.S. Internal Revenue Code, Section 501(c)(3).

HISTORY

1. New section filed 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-27-2006 order, including amendment of section, transmitted to OAL 3-26-2007 and filed 5-7-2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsections (g), (s), (aa), (hh) and (pp) filed 7-10-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).
6. Amendment of subsections (g) and (hh) filed 7-19-2007 as an emergency; operative 7-19-2007 (Register 2007, No. 29). A Certificate of Compliance must be transmitted to OAL by 1-15-2008 or emergency language will be repealed by operation of law on the following day.

§ 4970.51. Program Purpose.

The purpose of the OHMVR Grants and Cooperative Agreements Program is to promote well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well managed high-quality OHV Recreation areas, Roads, and trails, and to responsibly maintain the wildlife, soils, and habitat of Project Areas in a manner that will sustain long-term OHV Recreation in accordance with the legislative provisions and intent of the Act commencing at Public Resources Code (PRC) Section 5090.01.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.01-5090.70, Public Resources Code.

HISTORY

1. New section filed 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-27-2006 order, including amendment of section, transmitted to OAL 3-26-2007 and filed 5-7-2007 (Register 2007, No. 19).

§ 4970.52. Commission's Annual Program Review Meeting.

Prior to the start of each Application cycle, the Commission shall conduct one (1) public meeting to collect: 1) public input concerning the OHV Grants and Cooperative Agreements Program, 2) recommendations for program improvements, and 3) public input for specific Project needs for Grants and Cooperative Agreements Program areas.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.24(f), Public Resources Code.

HISTORY

1. New section filed 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-27-2006 order, including amendment of section, transmitted to OAL 3-26-2007 and filed 5-7-2007 (Register 2007, No. 19).

§ 4970.53. General Application Requirements.

(a) The Grants Program Manual, and all its contents and subsequent revisions submitted through the rulemaking process are hereby incorporated by reference.

(b) Awarding a Grant or Cooperative Agreement does not guarantee ongoing or future OHV funding in any Project category.

(c) Applications must establish how each proposed Project is directly related to sustaining OHV Recreation in the Project Area specified in the Application. Proposed Projects will be screened by the Division prior to scoring. Any Project Application that does not establish a specific link to OHV Recreation will not be considered. For the purposes of this section, "OHV Recreation" includes both legal and illegal OHV use on public or private property to which CVC Division 16.5 applies. Provided however, where the Project is related to illegal use, the Project purpose must be limited to enforcement to prevent such illegal use, allowable protection of resources, Restoration to Repair damage, or for barriers, signing, or education to prevent such illegal use.

(d) Subject to the discretion of the Division as specified in subsection (f)(4) of this Section, any Applications determined by the Division to not be in conformance with these requirements shall be returned to the Applicant without consideration.

(e) General Application requirements are as follows:

(1) Each Applicant may submit only one (1) Application for each Grant cycle. The Application may contain multiple Projects.

(2) Application requests for Projects shall be not less than $10,000 per Project and not exceed a maximum of $500,000 per Project type or a total of $2 million per Applicant.

(3) Acquisition, Conservation, Development, Planning, or Restoration Projects are funded for a three (3) year period. For Facilities Operation and Maintenance, Law Enforcement, OHV Safety and/or Education Program, and Trail Maintenance Projects not exceeding $15,000 per year, Funds may be requested for expenditure over a three (3) year period.

(4) Public Casual use of facilities shall not be less than sixty (60) percent of the total use in Project Areas.

(5) Equipment Funds requested or expended shall be in conformance with the requirements specified in the Grants Program Manual, Chapters 1 and 3.

(6) Payment of Administrative Costs from the Fund may not exceed ten (10) percent of the total Project amount requested in the Application.

(7) All Applicants shall undertake a public review process of their Application(s). The process shall include the following minimum steps:

(A) Public notice. At least thirty (30) calendar days prior to submitting the final Application, Applicants shall notice to the public of the opportunity to submit comments on the draft Application. The notice shall be published at a minimum in the Applicant's newsletter and/or Applicant's website and mailed to those persons, agencies or organizations the Applicant determines likely to have an interest in or be affected by the Project.

(B) Public review. Draft Applications shall be made available for public review and comment not later than the date of publication of the public notice. At a minimum, Applicants shall make available to the public for the purpose of this review, the Application Face Sheet, Project description, and Project Costs/Deliverables form.

(f) The Application submission process shall consist of the following:

(1) The Division shall establish a timeline for the submission of Applications and post the timeline on the Division Website.

(2) Applications that are not in the possession of the Division by the Application submission deadline (see 1.2.1 of the Grants Program Manual) shall be returned to the Applicant without consideration.

(3) Questions concerning the Application process and the interpretation of these regulations shall be submitted in writing to the Division Website, Questions and Answers section. Responses to these questions will be made in writing via the Division Website within five (5) calendar days of submission of the questions. The last date for submitting questions to the Division will be fifteen (15) calendar days prior to the final Application deadline. The Division shall provide a response to all Applicants on the Division Website not later than ten (10) calendar days before the Application deadline, in order for the response to be applicable. Applicants shall not rely on answers to questions unless placed on the Division Website, Questions and Answers section, by the Division.

(4) The Division may, but has no obligation, to waive or correct inconsequential defects in the Application. "Inconsequential", for the purpose of this subsection (f)(4) and subsection (f)(5), shall mean a situation where correction of an Application or waiver of a defect will not give the Applicant an unfair advantage over other Applicants or Applications.

(A) Examples of an unfair advantage may include, but are not limited to, situations where an Applicant is allowed to: increase or reduce its request and/or amend the Deliverables, provide missing information in an uncompleted form or submittal, provide new information that was not submitted in or with the Application as submitted on the submittal date, have its Application evaluated under other Project type criteria, or provide additional analysis of information submitted in the Application after the submittal date.

(B) Examples of inconsequential defects may include, but are not limited to: signing a form or other document that was complete as submitted, but not signed; correcting mathematical errors where those corrections do not cause the Application to violate maximum or minimum amounts allowable; clarifying the meaning of technical words or acronyms; or substituting a substantially equivalent product, service, Equipment, or Deliverable for one or more as submitted in the Application when the need for the substitution could not have been known by the Applicant on the submittal date.

(5) The Division may request additional information of an Applicant in order to clarify inconsequential information submitted in the Applications. Examples of inconsequential information include, but are not limited to: the location of a Project Area, habitat, or other affected area; cost entries on forms that do not match totals; or information on an otherwise completed form where the clarification does not change the purpose for the Project or amount requested.

(g) Except as provided in Section 4970.53(f)(4), Applications found to have defects that are inconsistent with applicable statute and/or these regulations will be rejected by the Division. The appeal process shall be as follows:

(1) The Division shall send a written notice of rejection to the Authorized Representative and Project Administrator as shown on the Application Face Sheet by both e-mail and FAX. The notice of rejection shall specify the defect(s) and refer to the appropriate statutes and regulations that apply.

(2) The Applicant has until 5:00 p.m. on the third full business day after the Division sends the notice of rejection to request an appeal by one of the following methods:

(A) Submission of an e-mail to the Grants Program Manager detailing the Applicant's response to the notice of rejection.

(B) Submission of a FAX to the Grants Program Manager detailing the Applicant's response to the notice of rejection.

(C) Contacting the Grants Program Manager to schedule a telephone conference to present the Applicant's response to the notice of rejection.

(D) Contacting the Grants Program Manager to schedule a meeting at the Division Headquarters to present the Applicant's response to the notice of rejection.

(3) If the Applicant does not receive a response from the Division by 5:00 p.m. on the fifth business day after the Applicant presents its response to the notice of rejection, the appeal shall be deemed denied.

(h) Applications shall meet all of the requirements contained in the Grants Program Manual, including fully completed Application Forms. All Application Forms are in the Appendix. In addition to the Forms, the Applications shall contain the following information for each Project:

(1) Applications must clearly describe each Project, including a demonstration of how each proposed Project is directly related to sustaining OHV Recreation in the Project Area specified in the Application.

(2) Documentation of the public review process.

(3) All city, county, Appropriate District, Educational Institution, and Nonprofit organization Grant Applications and any Federally Recognized Native American Tribe Cooperative Agreement Applications shall include a completed Governing Body Resolution certified by the clerk of the governing body.

(4) Photo(s) when needed, as described in the Grants Program Manual, Chapter 1.

(5) A map or maps as described in the Grants Program Manual, Chapter 1.

(6) The environmental requirements contained in Section 4970.63.

(7) If applicable, Applications shall include identification of the match to be applied to the Project in accordance with Section 4970.66.

(8) Project Applications that include a request for Funds to conduct Scientific Research related to the Project must provide:

(A) The research Project design that includes a description of the goals, objectives, and methodologies and how the research will be used to make management decisions sustaining long-term OHV Recreation.

(B) The curriculum vitae of the primary researcher(s).

(C) Documentation of peer review of the research plan. The peer review shall be conducted by at least three (3) qualified experts from the scientific discipline or related fields. The peer reviewers shall not be from the Applicant agency nor involved in implementing the research Project itself.

(D) Other information required to be included as specified in Article 2 under the Application content requirements for the specific Project type.

(9) Project-specific information required for submittal under Article 2.

(10) See Chapter 1 of the Grants Program Manual for lists of eligible and ineligible costs and Project-specific eligible costs.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50, 5090.51 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including amendment of section and NOTE, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsection (f)(4)(A) filed 7–10–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).

Article 2. Types of Projects and Specific Application and Content Requirements

§ 4970.54. Acquisition Projects.

(a) Acquisition Projects secure interests in land to: expand and/or sustain OHV Recreation access and Opportunities; provide Buffers; and/or eliminate trespass.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Acquisition Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Acquisition Projects.

(c) Applications for Acquisition Projects shall include all the information required under Section 4970.53(h) plus the following:

(1) An acquisition plan, which shows the steps and timelines for acquiring the Project and a discussion of the Applicant's ability to accomplish the Project.

(2) Due Diligence to determine if the property is usable for its intended purpose.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New article 2 (sections 4970.54–4970.64) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 4970.54–4970.64) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New article 2 (sections 4970.54–4970.64) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including amendment of section and NOTE and restructuring of article 2 to include sections 4970.54–4970.62, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.55. Conservation Projects.

(a) Conservation Projects are implemented in connection with ongoing OHV Recreation and OHV Opportunities to protect natural and Cultural Resources and develop and/or implement soil Conservation standards and WHPP/HMPs as required by the Act, including: Monitoring or researching those practices, activities, or Projects to provide data for management decisions; or Rerouting of Roads to comply with soil standards and wildlife habitat protection programs or to protect Cultural Resources.

(b) Cities, counties, Appropriate Districts, Federal Agencies, Federally Recognized Native American Tribes, Educational Institutions, and Nonprofit organizations are eligible to apply for Conservation Projects.

(c) Applications for Conservation Projects shall include all the information required under Section 4970.53(h) plus when applicable, Nonprofit organization and Educational Institution Applicants shall have a written agreement with the property manager, land management agency or landowner to perform the Project.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including amendment of section, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsection (c) filed 7–10–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).

§ 4970.56. Development Projects.

(a) Development Projects sustain OHV Opportunity and provide OHV Recreation, experiences, or related visitor services in the form of new, improved, or upgraded Facilities, Roads, trails, or areas, including the relocation of an existing Road or trail that is not a required Reroute within a Conservation or Trail Maintenance Project.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Development Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Development Projects.

(c) Applications for Development Projects shall include all the information required under Section 4970.53(h) plus the following:

(1) Conceptual drawings and site plans for the Development Project.

(2) Land tenure certification to the Division as indicated in the Grants Program Manual, Chapter 1, Application Instructions.

(d) Grantees are required to meet all access requirements under State or Federal law as applicable, including, without limitation, the Americans with Disabilities Act of 1990 (Public Law 101–336, July 26, 1990, 104 Stat 327).

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code; and Public Law 101–336, July 26, 1990, 104 Stat. 327.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including amendment of section, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.57. Facilities Operation and Maintenance (FO&M) Projects.

(a) Facilities Operation and Maintenance (FO&M) Projects are for routine work to maintain existing facilities, other than Roads, trails, or areas, and provide visitor assistance, and health and safety measures attributable or related to OHV Recreation being provided by the Applicant.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for

FO&M Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for FO&M Projects.

(c) Applications for FO&M Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5, and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including repealer of former section 4970.57 and renumbering and amendment of former section 4970.58 to new section 4970.57, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.58. Law Enforcement Projects.

(a) Law Enforcement Projects provide financial assistance to local and Federal Agencies for protection of life and property, including natural and Cultural Resources, enforcement of laws, public safety, search and rescue, personnel support, placement of barriers and other means of traffic control, and training related to OHV Recreation and OHV Opportunities.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Law Enforcement Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Law Enforcement Projects.

(c) Applications for Law Enforcement Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.64(b)(2), Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.58 to section 4970.57 and renumbering and amendment of former section 4970.59 to new section 4970.58 and amendment of NOTE, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.59. Off–Highway Vehicle (OHV) Safety and/or Education Program Projects.

(a) OHV Safety and/or Education Program Projects provide the following to members of the public:

(1) OHV safety activities, and/or

(2) Teaching safe and environmentally responsible operation of OHVs.

(b) Cities, counties, Appropriate Districts, Federal Agencies, Federally Recognized Native American Tribes, Educational Institutions, and Nonprofit organizations are eligible to apply for OHV Safety and/or Education Program Projects.

(c) Applications for OHV Safety and/or Education Program Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.59 to section 4970.58 and renumbering and amendment of former section 4970.60 to new section 4970.59, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.60. Planning Projects.

(a) Planning Projects fund activities that produce a report or reports that work out in advance and, in general, detail how an OHV Opportunity or Project Area is to be organized, developed, operated, conserved, and/or maintained, to meet demand and sustain long–term OHV Recreational use. Planning Projects may also provide programmatic management coordination.

(b) Project specific planning efforts such as engineering, landscape design, environmental analysis, permitting, and similar actions for specific Projects, such as Conservation, Development, or Restoration, must be submitted as a component of the specific Project type.

(c) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Planning Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Planning Projects.

(d) Applications for Planning Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.60 to section 4970.59 and renumbering and amendment of former section 4970.61 to new section 4970.60, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.61. Restoration Projects.

(a) Restoration Projects provide funding to complete all work activities that are necessary to return land, plant communities, and plant covers to conditions comparable to those of surrounding lands or at least those that existed prior to OHV Recreation, when the Road, trail, or area has been closed to OHV Recreation and the Applicant has adopted a decision to restore the lands when the Applicant has determined that:

(1) Best available Maintenance and Conservation practices are not sufficient to meet established soil standards and/or wildlife habitat protection program requirements.

(2) An area has been damaged by OHV Recreation where such OHV Recreation is not lawfully allowed on such area, or

(3) The Road, trail, or area that previously provided OHV Opportunity is closed as part of a plan adopted by the Applicant due to natural or cultural or other similar resource protection considerations.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Restoration and/or repair Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Restoration Projects.

(c) Applications for Restoration Projects shall include all the information required under Section 4970.53(h) plus the following:

(1) An explanation of what law enforcement efforts and follow up activities will be performed to ensure successful completion of the Restoration Project.

(2) Official documentation of:

(A) The Road, trail or area closure for one of the three reasons stated herein above, and

(B) The official decision to restore the lands or to proceed with the Restoration Project subject only to completion of environmental review required by either CEQA or NEPA.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.50 and 5090.64(a), Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.61 to section 4970.60 and renumbering and amendment of former section 4970.62 to new section 4970.61, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.62. Trail Maintenance Projects.

(a) Trail Maintenance Projects consist of two types: Trail Maintenance and/or trail Reroute where the Reroute is necessary due to safety issues and/or damage caused by natural disaster.

(b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Trail Maintenance Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Trail Maintenance Projects.

(c) Applications for Trail Maintenance Projects shall include all the information required under Section 4970.53(h) plus a Trail Maintenance Plan.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.62 to section 4970.61 and renumbering and amendment of former section 4970.64 to new section 4970.62, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsection (c) filed 7–10–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).

Article 3. Environmental and Match Requirements

§ 4970.63. California Environmental Quality Act (CEQA) Requirements.

(a) The Division is required to comply with CEQA (PRC Section 21000 et seq.) in order to approve all Grants and Cooperative Agreements under the OHMVR Grants and Cooperative Agreements Program.

(b) Where the Regulations and the Grants Program Manual require Funds for Project–specific environmental analysis (CEQA or NEPA compliance) to be requested as part of a Project to complete all Deliverables, such as: Acquisition, Conservation, Development, Planning, or Restoration, the Project approval and implementation process will consist of two (2) steps as follows:

(1) Full funding of the Project Agreement will be specifically conditioned on completion of CEQA or NEPA activities during the first phase of the Project to complete the Environmental Documentation authorized in the Project Agreement.

(2) When the CEQA or NEPA activities have been completed and the Grantee agency has made the decision to proceed with implementation of the Project, as conditioned by the outcome of the CEQA and/or NEPA document, the Project Agreement will be submitted to the Commission for approval to release the Funds available for completion of the Project.

(c) FOR CITY, COUNTY, APPROPRIATE DISTRICT, EDUCATIONAL INSTITUTION, AND NONPROFIT ORGANIZATION APPLICANTS ONLY:

(1) All city, county, Appropriate District, Educational Institution and Nonprofit organization Applicants shall provide the required documentation for the Division to determine that CEQA compliance has been met. All such Applicants relying on a Categorical Exemption for CEQA compliance shall also provide responses to questions required in the Environmental Review Data Sheet (ERDS) found in the Grants Program Manual Appendix. CEQA compliance shall be determined by one of the following:

(A) A Notice of Exemption (NOE) finding that the Project is exempt from CEQA that has been filed for the Project consistent with CEQA Guidelines Section 15062, or

(B) An Initial Study/Negative Declaration (IS/ND) or an Initial Study/Mitigated Negative Declaration (IS/MND) for activities that are not categorically exempt, but fit within the definition of activities that may be covered by a ND under CEQA, together with a copy of the Notice of Determination (NOD) filed for the Project, or

(C) An Environmental Impact Report (EIR) if the proposed activity poses a potentially significant impact as defined in an IS/ND checklist, or meets any of the tests for mandatory findings of significance under CEQA (PRC Section 21083; CEQA Guidelines Section 15065), or

(D) Other documentation indicating the requirements of CEQA have been satisfied in the discretion of the Applicant or the reasons the Applicant believes the Project is categorically exempt or not subject to the CEQA requirements.

(2) Within forty–five (45) calendar days of receipt of the Applications, the Division shall review the Application for environmental compliance.

(A) Any Application not addressing 4970.63(c)(1) shall be returned to the Applicant without further processing.

(B) If 4970.63(c)(1) is addressed and the Division needs to clarify information provided, the Division shall submit in writing a request for such information from the Applicant within the forty–five (45) day review period. The Division shall request the Applicant provide the additional information in writing to the Division within ten (10) calendar days of receipt of the request.

(C) Applicants that do not return the requested additional information within the ten (10) calendar day limit may have their Applications returned without further processing.

(3) Notwithstanding 4970.63(b)(1), where the Applicant is not a lead agency and CEQA compliance has not otherwise been met, the Applicant shall provide responses to questions required in the Environmental Review Data Sheet (ERDS) found in the Appendix, and shall also provide adequate information to the Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional Environmental Documentation required.

(A) Within forty–five (45) calendar days of determining the Application has complied with the Grants Program Manual, Chapter 1, Application Instructions, the Division will determine what additional documentation or information is required for the Division to complete the

requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The Division cannot promise to complete the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process. If the Division determines that it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.

(B) If the Division determines that additional information is required for the Application to comply with CEQA and that such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

(1) Applicants who do not return the requested additional information within the ten- (10) day time limit will have their Applications returned without further processing.

(2) For those Applications that are accepted for further CEQA compliance, the Division will use its best efforts to causethe CEQA compliance work to be completed in sufficient time for final Commission review of the Applications and approval to issue Project Agreements. However, the Division cannot guarantee the Project will be certified as CEQA compliant. Also, the Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the Commission for review and approval.

(d) FOR FEDERAL AGENCIES OR FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBE APPLICANTS ONLY

(1) All Federal Agency and Federally Recognized Native American Tribe Applicants shall submit completed Project-related NEPA compliance documentation with their Applications together with the responses to questions required by Grants Program Manual, Chapter 1, Section 1.4 to allow the Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional Environmental Documentation required.

(2) Within forty-five (45) calendar days of determining an Application has complied with the Grants Program Manual, Chapter 1, Application Instructions, the Division will determine what additional documentation or information is required for the Division to complete the requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The Division cannot promise to complete the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process. If the Division determines that it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.

(A) If the Division determines that additional information is required for the Applications to comply with CEQA and such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

(B) Applicants who do not return the requested additional information within the ten- (10) day time limit may have their Applications returned without further processing.

(C) For those Applications that are accepted for further CEQA compliance, the Division will use its best efforts to cause the CEQA compliance work to be completed in sufficient time for final Commission review and approval of the Applications for the Project(s). However, the Division cannot guarantee the Project will be certified as CEQA compliant. Also, the Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the Commission for review and approval.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50(g), 15000 et seq., and 21000 et seq., Public Resources Code; USC Title 42, Section 4371; and 40 CFR part 1500.1, et seq.

HISTORY

1. New section filed 4-3-2006 as an emergency; operative 4-3-2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-31-2006 as an emergency; operative 7-31-2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-28-2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11-27-2006 as an emergency; operative 11-27-2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-27-2006 order, including relocation of article 3 heading from section 4970.65 to section 4970.63, repealer of former section 4970.63 and renumbering and amendment of former section 4970.65 to new section 4970.63, transmitted to OAL 3-26-2007 and filed 5-7-2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsections (c)(1), (c)(2)(A)-(B) and (c)(3) filed 7-10-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).

§ 4970.64. Wildlife Habitat Protection Program (WHPP) / Habitat Management Program (HMP).

(a) A Wildlife Habitat Protection Program (WHPP) is an animal and plant Habitat Management Program (HMP) designed to sustain a Viable Species Composition for the Project Area, pursuant to PRC Sections 5090.35(b) and 5090.50.

(b) All Federal Agency and Federally Recognized Native American Tribe Applications for Funds, with the exception of law enforcement shall submit a WHPP/HMP designed to sustain a Viable Species Composition for the Project Area.

(c) All city, county, and Appropriate District Applicants for Acquisition and Development Projects shall develop and submit with their Application, pursuant to PRC Section 5090.53, a WHPP/HMP designed to sustain a Viable Species Composition for the Project Area.

(d) When WHPP/HMP implementation is required, the WHPP/HMP must be implemented regardless of whether the Grantee received Funds specifically for WHPP/HMP implementation.

(e) A WHPP/HMP shall follow the Grants Program Manual, Chapter 1, Application Instructions, and the Appendix, and include the following components as applicable:

(1) Species or habitats of concern related to OHV Recreation.

(2) Risk factors associated with OHV Recreation.

(3) Management objectives and actions, including success criteria.

(4) Monitoring.

(5) Management review and response.

(f) Within forty-five (45) calendar days of the Grant Application submittal date, the Division shall review all Applications to ensure that all required components of the WHPP/HMP are addressed.

(1) Any Application required to include a WHPP/HMP pursuant to 4970.64(b) or (c) and not addressing all required WHPP/HMP components as described in Grants Program Manual, Chapter 1, Section 1.5 shall be returned to the Applicant without further processing.

(2) If all required WHPP/HMP components are addressed but the Division needs to clarify information provided and has determined that such clarification may be completed within the timeframe for the Application process, it shall request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

(3) Applicants who do not return the requested additional information within the ten- (10) day time limit shall have their Applications returned without further processing.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.64 to section 4970.62 and renumbering and amendment of former section 4970.66 to section 4970.64, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).
5. Change without regulatory effect amending subsection (f)(1) filed 7–10–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 28).

§ 4970.65. Soil Conservation Program.

(a) All Federal Agency and Federally Recognized Native American Tribe Applications, with the exception of Applications solely for law enforcement, pursuant to PRC Section 5090.50(i), shall submit documentation showing that the Project meets the Soil Conservation Standards required by PRC Section 5090.53(b).

(b) All city, county, and Appropriate District Applications for Acquisition and Development Projects shall submit evidence showing that the Project meets the Soil Conservation Standards required by PRC Section 5090.53(b).

(c) The Soil Conservation Program shall comply with PRC 5090.35, 5090.50, and 5090.53, the Grants Program Manual, Chapter 1, the Appendix, and the Soil Conservation Guidelines/Standards for Off–Highway Vehicle Recreation Management (11/14/91) until replaced by any subsequent Soil Conservation Standards. The Soil Conservation Program shall include the following components as applicable:

(1) Maintenance

(2) Soils Condition Assessment

(3) Monitoring

(4) Actions Taken

(5) Technical Assessment for New Trail Construction

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

HISTORY

1. New article 3 (sections 4970.65–4970.68) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 4970.65–4970.68) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New article 3 (sections 4970.65–4970.68) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including relocation of article 3 heading from section 4970.65 to section 4970.63, renumbering of former section 4970.65 to new section 4970.63 and renumbering and amendment of former section 4970.67 to section 4970.65, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.66. Match Requirements.

(a) Except as provided in 4970.66(c), cities, counties, and Appropriate Districts, Nonprofit organizations, and Educational Institutions shall provide matching funds or the equivalent value of services, material, or property used, in an amount of not less than twenty–five (25) percent of the total expense of the offhighway motor vehicle Facility to be funded by the Grant.

(b) All Federal Agencies and Federally Recognized Native American Tribes are exempt from the matching funds requirement in accordance with PRC Section 5090.51(a).

(c) There shall be no matching fund requirement for Applications that request Funds for Acquisition, Development, Construction, or Planning of a Regional OHV Facility as defined in Section 4970.50(uu).

(d) Cities, counties, and Appropriate Districts must provide a match as follows:

(1) For Acquisition Projects, in non–regional facilities only.

(2) For Conservation Projects, in all facilities with the exception of Construction activities in regional facilities.

(3) For Development Projects, in non–regional facilities only.

(4) For FO&M Projects, in all facilities with the exception of Construction activities in regional facilities.

(5) For Law Enforcement Projects, in all facilities.

(6) For OHV Safety and/or Education Program Projects, in all facilities.

(7) For Planning Projects, in non–regional facilities only.

(8) For Restoration Projects, in all facilities with the exception of Construction activities in regional facilities.

(9) For Trail Maintenance Projects in all facilities with the exception of Construction activities in regional facilities.

(e) Nonprofit organizations and Educational Institutions must provide a match as follows:

(1) For Conservation Projects, in all facilities with the exception of Construction activities in regional facilities.

(2) For OHV Safety and/or Education Program Projects, in all facilities.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.51, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.66 to section 4970.64 and renumbering and amendment of former section 4970.68 to new section 4970.66, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

Article 4. Application Evaluation and Approval of Project Agreements

§ 4970.67. Application Evaluation System.

Applications that meet the submission requirements will be evaluated, scored, and awarded on a competitive basis according to the provisions of the Grants Program Manual, Chapter 2, Application Evaluation System and OHV Form K in the Appendix.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.24 and 5090.32, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including relocation and amendment of article 4 heading from section 4970.69 to section 4970.67, renumbering of former section 4970.67 to section 4970.65 and renumbering and amendment of former section 4970.69 to new section 4970.67, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.68. Commission Approval of Grants and Cooperative Agreements Program Applications.

(a) Applications shall be considered once annually as long as OHV Trust Funds are available.

(b) In accordance with the provisions of the Grants Program Manual, Chapter 2, the Commission Chair may designate a Grants and Cooperative Agreements Program Subcommittee ("Subcommittee") to hold public meetings for preliminary consideration of the Applications that have been evaluated, scored, and ranked by the Division.

(c) The Commission shall review Applications and approve the issuance of Project Agreements by the Division. This review shall be conducted in accordance with these regulations and will include public comment relating to the Applications submitted. The Commission may accept the findings and conclusions of the Division, any recommendations of the Subcommittee, if appointed by the Chair, or make revisions based on these regulations, the information in the Applications as originally submitted, and any public comment regarding the information submitted in the original Applications.

(d) The Division shall post the Commission's approved Project list on the Division Website.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.61, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.68 to new section 4970.66 and renumbering former section 4970.70 to new section 4970.68 with amendments to section heading and section, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

Article 5. Project Administration Procedures

§ 4970.69. Project Agreements.

The Division shall prepare and execute Project Agreements to implement the Projects approved by the Commission.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.61, Public Resources Code.

HISTORY

1. New article 4 (sections 4970.69–4970.70) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 4970.69–4970.70) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 4970.69–4970.70) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including relocation of article 4 heading from section 4970.69 to section 4970.67, relocation and amendment of article 5 heading from section 4970.71 to section 4970.69, renumbering of former section 4970.69 to section 4970.67 and new section 4970.69, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.70. Project Administration.

(a) The Division and the Grantees shall comply with the Project administration procedures set forth in the Grants Program Manual, Chapter 3.

(b) Grantees shall maintain financial accounts, documents, and records in accordance with the accounting practices described in Chapter 3, Section 3.6.3 for all Projects and shall make them available to the Department's Auditor.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Sections 5090.32 and 5090.50, Public Resources Code.

HISTORY

1. New section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.70 to section 4970.68 and new section 4970.70, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.71. Performance Reviews.

(a) The Division may conduct Performance Reviews of the Grantee's Project(s) taking into consideration past and current performance. The purpose of these Performance Reviews is to identify any areas where the Division may provide technical advice and consultation to the Grantee to improve any aspect of a Project. These Performance Reviews may include, but are not limited to, review of a Project to determine progress toward the completion of Deliverables, review of implementation of WHPP/HMP and Soil Conservation Programs, or other requirements contained in Project Agreements. Performance Review may be accomplished by, desk reviews, questionnaires, and other standards of inquiry, and/or site visits.

(b) The Grantee shall permit Division staff, with a minimum of twenty–one (21) calendar days notice, to conduct a site visit to review the Grantee's Project(s). The site visit will include review of progress towards the accomplishment of Deliverables, which may become part of Audit findings, and may include a final inspection of the Project facilities and other Project Deliverables to determine if the work performed is in accordance with the Project Agreement.

(1) Grantees shall make their Project Areas, applicable documentation, and staff who are knowledgeable about or oversee the Project available to the Division for site visits as described in the Grants Program Manual, Chapter 3.

(2) When Division staff conducts a site visit, staff shall develop a report containing any comments and recommendations with regard to the performance of the Grantee's Project. A copy of the report shall be provided to the Grantee.

(3) Grantees shall respond in writing to the Division within sixty (60) calendar days to all comments and recommendations provided by Division staff as a result of a site visit. The response shall describe all actions taken or proposed in response to the recommendations in the site visit report.

(c) Failure to cooperate with requests for information or site access during a Performance Review or Audit made pursuant to these regulations may result in denial of payment requests and/or reimbursement to the State of amounts advanced.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New article 5 (sections 4970.71–4970.72) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 4970.71–4970.72) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 4970.71–4970.72) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of

Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 11–27–2006 order, including relocation and amendment of article 5 heading from section 4970.71 to section 4970.69, renumbering of former section 4970.71 to new section 4970.72 and renumbering and amendment of former section 4970.72 to new section 4970.71, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

§ 4970.72. Audits.

(a) The Department of Parks and Recreation Audit Office staff or other Department designee will Audit Projects to assure that the expenditures incurred by the Grantee were made in accordance with the provisions of Public Resources Code Section 5090.50 and have been expended in accordance with the Project Agreement.

(b) The Grantee shall retain all financial accounts, documents, and records pertinent to the Project for: a) three (3) years from the expiration date of the Project Agreement or b) until an Audit started during the three (3) years following the expiration of the Project Agreement has been completed; a report is published; and any Audit findings are resolved and/or payment or other correction made with regard to any Audit findings contained in the final Audit report.

(c) Failure to fully complete Projects as agreed in the Project Agreement; and/or to maintain records supporting the expenditures made pursuant to the Project Agreement, these regulations, and any other applicable law; and/or failure of such records to support expenditures claimed and payments received, shall be grounds for an Audit exception requiring refund of amounts paid.

(d) The Department shall have the right to visit Project Areas to confirm the completion of Deliverables and inspect and/or make copies of any books, records, or reports of the Grantee pertaining to all Projects.

(e) Upon completion of the Department Audit, the Grantee shall be provided a copy of the final Audit report that shall contain the results of the Audit including all Audit exceptions and refunds found to be due. If the Audit results identify exceptions resulting in refunds due to the State, the Grantee shall have sixty (60) calendar days to refund the overpayment to the State unless the Grantee elects to request review of the Audit results as set forth in 4970.72(f).

(f) A Grantee may request review of the Audit report. The Grantee must request the review in writing to the Division within thirty (30) calendar days of receipt of the Audit report. Where a Grantee has requested such review, the Division will have final authority to determine what if any amount is due back to the State. The Division will have thirty (30) calendar days to respond to the request. If the Division does not provide a response within the thirty (30) days, the Audit report will be deemed final. The Grantee shall have sixty (60) calendar days from the date Audit results are deemed final to remit payment. Failure to remit payment within the sixty (60) calendar days may result in the withholding or commensurate reduction of future reimbursement payments or advances on other Grantee Projects or such other remedies to collect the money as may be available by law.

NOTE: Authority cited: Sections 5001.5 and 5003, Public Resources Code. Reference: Section 5090.32, Public Resources Code.

HISTORY

1. New article 5 (sections 4970.71–4970.72) and section filed 4–3–2006 as an emergency; operative 4–3–2006 (Register 2006, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 4970.71–4970.72) and section refiled 7–31–2006 as an emergency; operative 7–31–2006 (Register 2006, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–28–2006 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 4970.71–4970.72) and section refiled 11–27–2006 as an emergency; operative 11–27–2006 (Register 2006, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–27–2006 order, including renumbering of former section 4970.72 to new section 4970.71 and renumbering and amendment of former section 4970.71 to new section 4970.72, transmitted to OAL 3–26–2007 and filed 5–7–2007 (Register 2007, No. 19).

Chapter 16. Relocation Assistance

Article 1. General Provision

§ 4971. Department of Parks and Recreation Relocation Assistance.

The regulations adopted under this chapter implement the requirements of Section 7267.8 of the Government Code for all public entities to adopt rules and regulations to implement payments and to administer relocation assistance in accordance with the rules and regulations adopted by the Department of Housing and Community Development. With respect to a federally funded project, the Department of Parks and Recreation shall make relocation assistance payments and provide relocation advisory assistance as required under federal law. The Department of Housing and Community Development Relocation Guidelines (Title 25, California Code of Regulations, Chapter 6, Subchapter 1, Articles 1 through 6, commencing with Section 6000 and concluding with Section 6198), including any subsequent amendments thereto, are hereby incorporated by reference as if fully set forth in this chapter. For purposes of this chapter, "public entity" as used in the Department of Housing and Community Development Guidelines shall mean "Department of Parks and Recreation".

NOTE: Authority cited: Section 5003, Public Resources Code. Reference: Section 7267.8, Government Code.

HISTORY

1. New chapter 16, article 1 (section 4971) and section filed 2–28–2002 as an emergency; operative 2–28–2002 (Register 2002, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–2002 or emergency language will be repealed by operation of law on the following day.
2. New chapter 16, article 1 (section 4971) and section refiled 6–27–2002 as an emergency; operative 6–27–2002 (Register 2002, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–25–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6–27–2002 order transmitted to OAL 10–15–2002 and filed 10–28–2002 (Register 2002, No. 44).

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CALIFORNIA CODE OF REGULATIONS

Title 14. Natural Resources

Division 4. Department of Boating and Waterways

Vol. 19

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Division 4. Department of Boating and Waterways

Chapter 1. Department of Boating and Waterways

Article 1. Planning Loan Regulations

§ 5000. Short Title.

This article shall be known and may be cited as the Boating and Waterways Planning Loan Regulations under which the Department of Boating and Waterways may make planning loans to eligible applicants in accordance with the provisions of section 71.4 of the Harbors and Navigation Code.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Repealer of Article 1 (Sections 5000 through 5003) and new Article 1 (Sections 5000 through 5004) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Register 66, No. 43.
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5001. Loan Conformity.

Any loan made to a county, city, or district for the purpose of planning for the acquisition, construction, improvement, maintenance or operation of small craft harbors shall be in conformity with this article.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5002. Application.

No planning loan shall be made unless written application therefor is filed with the Department of Boating and Waterways. All such applications shall contain a statement of facts certified as true by the governing body of the applicant showing that the loan in the amount requested, if made, will not be in violation of the California Constitution, Article XVI, Section 18, or of the Harbors and Navigation Code, Section 71.6.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.6 and 85.2, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5003. Terms of Loan.

Planning loans shall be for a period not to exceed ten years.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5004. Approval.

NOTE: Authority cited: Section 38, Harbors and Navigation Code. Reference: Section 71.6, Harbors and Navigation Code.

HISTORY

1. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

Article 1.1. Public Small Craft Harbor Loan Regulations

§ 5100. Short Title.

This article shall be known and may be cited as the Boating and Waterways Public Small Craft Harbor Loan Regulations under which the Department of Boating and Waterways may make construction loans to eligible applicants for small craft harbor facilities and connecting waterways in accordance with the provisions of section 71.4 of the Harbors and Navigation Code.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Repealer of Art. 1.1 (Sections 5100 through 5119) and new Art. 1.1 (Sections 5100 through 5106) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Registers 69, No. 3 and 71, No. 13.
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
4. Amendment of article heading and section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5101. Definitions.

As used in this article:

(a) "Applicant." A city, county, or district which requests or receives a loan and has the statutory authority to undertake the development of a small craft harbor, described in Section 71.4 of the Harbors and Navigation Code.

(b) "Collateral." Property, both real and personal, whether tangible or not, pledged as security for repayment of a debt, including but not limited to any or all of the following: an interest in real property; a mortgage or security interest (deed of trust) in real estate, including buildings or property of the applicant, a deed of trust or lease and leaseback of the project area; an irrevocable letter of credit in an amount equal to the principal and estimated accrued interest; a collateral assignment of rents and leases equal to not less than 125 percent of applicant's total annual debt service to the department; a security agreement; a Uniform Commercial Code financing statement (UCC–1).

(c) "Commission." The Boating and Waterways Commission.

(d) "Contract." A contract to implement the disbursement of loan funds.

(e) "Default":

(1) The failure of an applicant to make any payment required by the contract within 30 days of the due date of the payment,

(2) the failure of an applicant to comply with any other requirement of the contract. Such defaults, for failure to comply with terms of contract other than payments, may be cured by complying with the requirement within 180 days after receipt of written notice from the department specifying such failure,

(3) the provision of false representations or false warranties by the applicant in response to any obligations under the contract,

(4) the failure of an applicant to conduct appropriate proceedings in good faith to contest any levy or proceeding against the collateral or applicant's interest therein; or

(5) the filing of a petition by an applicant under the provisions of the Bankruptcy Code, or the failure of an applicant to conduct appropriate proceedings in good faith to contest a bankruptcy filing by a third party when such action affects the collateral.

(f) "Department." The Department of Boating and Waterways.

(g) "Loan." A loan for the purpose of acquisition, construction, and/or improvement, maintenance or operation of small craft harbors, related facilities, or connecting waterways, pursuant to Harbors and Navigation Code Section 71.4.

(h) "Project." Any construction, improvement, acquisition, maintenance or operation of small craft harbors, related facilities, or connecting waterways.

(i) "Project Area." A delineated area in which the project is to be located.

(j) "Project Costs." Those contract, equipment, labor, material and construction costs which are incurred by the applicant for the purpose of completing the project; however, such project costs shall not include indirect or overhead charges incurred by the applicant for its own personnel.

(k) "Reserve Fund." A separate and independent fund for the exclusive purpose of providing extraordinary, non-routine maintenance, repair or replacement during the loan period.

(*l*) "Surplus Revenues." Revenues received by an applicant from any source within a project area less the applicant's expenses for (1) loan repayment, and (2) operation and maintenance (including the Reserve Fund) of the project; tax revenues may be considered as a revenue source.

(m) "Unpaid Balance." Total outstanding debt, including principal, interest and penalties, if applicable.

(n) "Vessel Pumpout Facilities." Vessel sewage pumpout facilities.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4, 85.2 and 87, Harbors and Navigation Code.

HISTORY

1. New subsection (g) filed 1–20–78; effective thirtieth day thereafter (Register 78, No. 3).
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
4. Amendment filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).
5. Editorial correction of subsection (a) (Register 2002, No. 7).
6. New subsection (n) and amendment of NOTE filed 11–14–2006; operative 12–14–2006 (Register 2006, No. 46).

§ 5102. Application.

(a) Preliminary Coordination: Loans will be processed in accordance with departmental guidelines and criteria. The applicant may seek departmental assistance in formulating the project.

(b) Preliminary Study: The applicant's formal request for a loan will not be submitted until the department's reconnaissance survey of the proposed project area has determined the initial acceptability of the project and the applicant has been so notified.

(c) Formal Application: Upon receipt of a favorable preliminary report from the department, the applicant may make a formal loan application which shall include:

(1) Feasibility Study: A report containing sufficient information and detail to demonstrate that the project is both engineeringly and financially feasible. The report shall include, but not be limited to:

(A) A project plan and map which establishes the project area and location.

(B) Preliminary project layout and designs of project features in sufficient detail to develop accurate cost estimates.

(C) A plan for operational and fiscal management of the project throughout the loan period.

(D) The proposed method and means of retiring the loan, meeting other financial obligations of the project, and, if the project is to be undertaken with funds in addition to the loan applied for, a funding plan indicating the sources of such additional construction funds.

(E) A report on the effect the project would have on the environment. The department will provide the applicant with a copy of the latest law on this subject.

(F) A plan to capitalize a reserve fund in an amount specified by the department.

(G) Collateral acceptable to the department.

(2) A designation of a representative authorized to act for the applicant to sign any necessary papers or to otherwise act as the representative of the applicant.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
2. Amendment of subsections (b), (c), (c)(1), (c)(1)(B) and (c)(1)(D)–(E) and new subsections (c)(1)(F)–(G) filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5103. Feasibility Review.

The applicant's formal application will be judged as to the following considerations:

(a) Engineering feasibility, including a determination as to whether or not the project can be developed within the total amount of funds to be made available.

(b) Financial feasibility, including an analysis of the availability of capital to finance construction to completion, users' willingness and ability to pay anticipated berthing and other charges used in estimating revenues, and evaluation of the sufficiency of revenues to cover annual cost on a year–by–year basis, including maintenance of a reserve fund and the amortization of the applied for loan.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
2. Amendment filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5104. Priority.

When considering applications, the department shall, in addition to priorities set forth in the Harbors and Navigation Code, rank applications based upon the following:

(a) First priority shall be given to projects based upon issues of the health and safety of boaters using the facilities.

(b) Next, priority shall be given to projects currently receiving phased funding from the department.

(c) Next, priority shall be given based upon availability of matching funds.

(d) Next, priority shall be given based upon relative demand for facilities in the same market area, as determined by the department. Consideration shall be given to:

(1) Population size of the market area.

(2) Similar facilities in the market area.

(3) Boating activity in the market area.

(e) Next, priority shall be given to small craft harbor improvement projects that include restroom facilities, vessel pumpout facilities, oil recycling facilities, and receptacles for the purpose of separating, reusing, or recycling all solid waste materials. The standard to be followed by the department in ranking loan applications under this subdivision is the cumulative level of service provided by the small craft harbor for the aforementioned facilities.

(f) In the event that a priority between applications cannot be established by Subsections (a) through (e), priority shall be given to applicants with greatest ability to repay the loan.

(1) Evaluation of the applicant's ability to repay shall be based on the applicant's audited financial statements for the previous three years, if available.

(2) If financial statements are not available, the applicant will provide other information acceptable to the department which establishes a financial ability to repay the loan.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4, 85.2 and 87, Harbors and Navigation Code.

HISTORY

1. New section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27). For prior history see Register 85, No. 26.
2. New subsection (e), subsection relettering and amendment of newly designated subsection (f) filed 11–14–2006; operative 12–14–2006 (Register 2006, No. 46).

§ 5105. Loan Terms and Conditions.

The agreement between the department and the applicant shall include but not be limited to the following provisions:

(a) A provision to the effect that the loan will be used for the purpose of developing the project in a continuous and expeditious manner to completion and that the project when completed will be made available and open to all on equal and reasonable terms.

(b) A provision specifying that no loan funds for construction purposes shall be released to an applicant until final plans and specifications for the project (or a particular portion thereof to be constructed with such funds) are approved in writing by the department.

(c) A provision requiring applicant to comply with department approved construction plans and specifications and change orders thereto.

(d) A repayment plan setting forth the provisions for repayment of principal and interest until the loan is repaid in full.

(e) A provision permitting inspection of the project by the department or its agents at any time during construction or after completion, and permitting the inspection and audit of all records of the applicant relating to the project until the loan is paid in full.

(f) A provision that the applicant will provide fire and extended coverage insurance to ninety percent of the value of insurable structures within the project area with the department named as additional insured.

(g) A provision that the applicant will provide insurance, with the department named as additional insured, to cover liability arising from design, planning, construction, maintenance or operation of the project in the following minimum amounts:

(1) Bodily injury $300,000 each person $1,000,000 each occurrence

(2) Property and product damage $500,000 each occurrence $1,000,000 each aggregate

(h) A provision allowing applicant to provide self-insurance in the amounts prescribed in subsection (g), above.

(i) A provision that during the loan repayment period applicant shall not sell, lease, transfer, exchange, mortgage or hypothecate in any manner all or any portion of the real property or improvements within the project area without prior written approval of the department.

(j) A provision requiring applicant to establish and capitalize a reserve fund in an amount and under terms and conditions specified by the department.

(1) The reserve fund shall be an interest-bearing account.

(2) In order to withdraw funds from the reserve fund, the signature of the director, or his or her designee shall be required.

(3) All funds remaining in the reserve fund account shall be returned to the borrower upon full performance of the loan contract. However, unless and until all reserve funds, including accumulated interest, are first committed to improvements at the marina, the borrower may not apply for additional department funding for any project within the marina for a period of five years beginning on the last date any reserve funds are returned to the borrower.

(k) A statement that surplus revenues shall be administered as follows:

(1) The applicant shall retain and invest in reasonable liquid assets all surplus revenues;

(2) Except for the purpose of making capital improvements and at the discretion of the department, no expenditure of surplus revenues other than for the advance repayment of the loan will be permitted until the loan is paid in full;

(3) The applicant shall record all surplus revenues in a separate account and such account shall reflect all receipts by the applicant of revenues originating within the project area.

(*l*) A provision that the department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and copy any records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated.

(m) A provision that the borrower agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code; and General Services, Standard Agreement Language, as found in GTC 699 (as amended 6/99).

HISTORY

1. Amendment filed 1-20-78; effective thirtieth day thereafter (Register 78, No. 3).
2. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).
3. Amendment of section heading, section and NOTE filed 7-2-2001; operative 8-1-2001 (Register 2001, No. 27).

§ 5106. Project Development.

(a) All plans and specifications shall be prepared by persons licensed by the State of California to undertake the type of design work required by the project. All design plans, specifications and reports shall be signed by the licensee. The designer's license number shall appear on the documents. Plans and specifications for work to be accomplished by force account shall be in final form to permit immediate undertaking of the project.

(b) Property Control. Land and water area to be acquired with the loan funds shall be acquired promptly after execution of the loan agreement. No loan funds for strictly construction purposes shall be released until all land and water areas necessary for the construction of the project have been acquired as evidenced by a title insurance policy or other evidence satisfactory to the department. If the loan is based upon a leasehold estate, applicant's leasehold estate (including renewal options) as specified by contract and with finite time periods, must extend at least to the end of the loan period.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).
2. Amendment filed 7-2-2001; operative 8-1-2001 (Register 2001, No. 27).

§ 5107. Default Remedies.

Upon the occurrence of a default, the department:

(a) May exercise all rights and remedies accorded to the department by law, including, but not limited to, those rights established in the Harbors and Navigation Code;

(b) May declare all unperformed obligations, in whole or in part, of the applicant immediately due and payable without demand or notice.

(c) May deposit funds obtained from the sale of collateral, less reasonable cost of recovery or maintenance of property, in the Harbors and Watercraft Revolving Fund. Any remaining funds shall be provided to the borrower, in accordance with California law.

NOTE: Authority cited: Sections 63.9(e) and 71.4, Harbors and Navigation Code. Reference: Sections 71.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7-2-2001; operative 8-1-2001 (Register 2001, No. 27).

Article 1.2. Launching Facility Grant Regulations

§ 5150. Short Title.

This article shall be known and may be cited as the Boating and Waterways Launching Facility Grant Regulations under which the Department of Boating and Waterways may make grants to eligible applicants in accordance with the provisions of Section 72.5 of the Harbors and Navigation Code.

NOTE: Authority cited: Sections 63.9(e) and 72.5, Harbors and Navigation Code. Reference: Sections 72.5 and 85.2, Harbors and Navigation Code.

HISTORY

1. Repealer of Article 1.2 (Section 5200) and new Article 1.2 (Sections 5150 through 5154) filed 5-11-71; effective thirtieth day thereafter (Register 71, No. 20). For history of former Article 1.2 (now Article 2), see Register 69, No. 3.
2. Amendment filed 2-16-79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).$ $T

§ 5151. Grant Conformity.

Any grant made to a county, city, or district for the purpose of construction and development of small craft launching facilities shall be in conformity with this article.

NOTE: Authority cited: Sections 63.9(e) and 72.5, Harbors and Navigation Code. Reference: Sections 72.5 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).

§ 5152. Application.

Applications for launching facility grants shall be in accordance with procedures established by the department, and shall include a feasibility report, prepared at applicant's expense, containing demonstrations of site suitability, engineering and financial feasibility, and economic justification.

NOTE: Authority cited: Sections 63.9(e) and 72.5, Harbors and Navigation Code. Reference: Sections 72.6 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5153. Approval of Grant.

NOTE: Authority cited: Section 38, Harbors and Navigation Code. Reference: Sections 72.6 and 82, Harbors and Navigation Code.

HISTORY

1. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 5154. Construction and Operation Agreement.

A construction and operation agreement between the applicant and the department will be entered into after funds are appropriated, specifying that applicant will carry insurance as required by the department and that the completed facility will be operated and maintained for a period of 20 years at no cost to the department. If the applicant fails to construct, maintain or operate the facility in accrdance with the terms of the agreement, he may be required, at the option of the department, to reimburse the department for the State's share of the costs of development on a prorated unexpired term basis.

NOTE: Authority cited: Sections 63.9(e) and 72.5, Harbors and Navigation Code. Reference: Sections 72.5 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

Article 1.3. Floating Rest Room Grant Regulations

§ 5160. Short Title.

This article shall be known and may be cited as the Boating and Waterways Floating Rest Room Grant Regulations under which the Department of Boating and Waterways may make grants to eligible applicants in accordance with the provisions of Section 72.7 of the Harbors and Navigation Code.

NOTE: Authority cited: Sections 63.9(e) and 72.7, Harbors and Navigation Code. Reference: Sections 72.7 and 85.2, Harbors and Navigation Code.

HISTORY

1. New Article 1.3 (Sections 5160–5163) filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5161. Grant Conformity.

Any grant made to a county, city, district, or other public agency for the purpose of construction and development of floating rest room facilities shall be in conformity with this article.

NOTE: Authority cited: Sections 63.9(e) and 72.7, Harbors and Navigation Code. Reference: Sections 72.7 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5162. Application.

Applications for floating rest room grants shall include:

(a) A demonstration that the body of water on which the rest room would be located is affected by significant seasonal fluctuation in water surface elevation and/or a lack of conveniently located and accessible landside sanitary facilities; and

(b) A finding that due to either or both of the aforesaid conditions, conventional rest rooms cannot meet the needs of boaters and the presence of floating rest rooms may lessen environmental degradation of the body of water.

NOTE: Authority cited: Sections 63.9(e) and 72.7, Harbors and Navigation Code. Reference: Sections 72.7 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 5163. Construction and Operation Agreement.

A construction and operation agreement between the applicant and the Department will be entered into after funds are appropriated, specifying that applicant will carry insurance as required by the Department, and that the completed rest room will be operated and maintained for a period of ten years at no cost to the Department. If the applicant fails to construct, maintain or operate the rest room in accordance with the terms of the agreement, the applicant may be required, at the option of the Department, to reimburse the Department for the State's share of the costs of development on a prorated unexpired term basis.

NOTE: Authority cited: Sections 63.9(e) and 72.7, Harbors and Navigation Code. Reference: Sections 72.7 and 85.2, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

Article 1.4. Recreational Marina Loan Regulations

§ 5170. Short Title.

This article shall be known and may be cited as the Boating and Waterways Recreational Marina Loan Regulations under which the Department of Boating and Waterways may make loans to private marina owners in accordance with the provisions of section 76.3 of the Harbors and Navigation Code.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3 and 85.2, Harbors and Navigation Code.

HISTORY

1. New article 1.4 (sections 5170–5176) and section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27). For prior history of article 1.4 (sections 5170–5178), see Register 86, No. 35.

§ 5171. Definitions.

For the purposes of this article, the definitions found in Harbors and Navigation Code Sections 30 through 40 and 76 through 76.8 shall apply unless otherwise indicated. The following supplementary definitions shall also govern the construction of this article:

(a) "Collateral." Property, both real and personal, whether tangible or intangible, pledged as security for repayment of a debt, including but not limited to: a mortgage or security interest in real estate, buildings, equipment accounts, contract rights and chattel paper of the borrower or any third party legally bound as a surety with the knowledge that the surety is bound.

(b) "Commission." The Boating and Waterways Commission.

(c) "Contract." The Recreational Marina Loan agreement to implement the disbursement of loan funds.

(d) "Default":

(1) the failure of a borrower to make any payment required by the contract within 30 days of the due date of the payment,

(2) the failure of a borrower to comply with any other requirement of the contract. Such default may be cured by complying with the requirement within 30 days after receipt of written notice from the department specifying such failure,

(3) the provision of false representations or false warranties by the borrower in response to any obligations under the contract,

(4) the failure of a borrower to conduct appropriate proceedings in good faith to contest any levy or proceeding against the collateral or borrower's interest therein; or

(5) the filing of a petition by a borrower under the provisions of the Bankruptcy Code, or the failure of a borrower to conduct appropriate proceedings in good faith to contest a bankruptcy filing by a third party when such action affects the collateral.

(e) "Department." The Department of Boating and Waterways.

(f) "Loan" A loan made pursuant to Section 76.3 of the Harbors and Navigation Code.

(g) "Project." The development of boating facilities specified in the contract.

(h) "Project Area." A delineated area in which the project is to be located.

(i) "Project Costs." Those equipment, labor, material and construction costs that are incurred by the borrower for the purpose of completing the project; however, such project costs shall not include indirect or overhead charges incurred by the borrower for its own personnel and shall not include any expenses incurred prior to the effective date of the contract.

(j) "Reserve Fund." A separate and independent fund for the exclusive purpose of providing extraordinary, non–routine, maintenance, repair or replacement during the loan period.

(k) "Unpaid Balance." Total outstanding debt, including principal, interest and penalties, if applicable.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5172. Application.

(a) Loan Application: An application for any loan under Section 76.3 of the Harbors and Navigation Code shall be filed with the department and shall include a copy of:

(1) Federal income tax returns for the business and/or owners and partners, as requested by the department, for the three years immediately preceding an application for a loan. Federal income tax returns shall not be released by the department, except with permission of an applicant or borrower, unless ordered, as specified by court order.

(2) All land and water use permits required such as by federal, state and local planning agencies needed to develop the project.

(3) An "as is" or current appraisal of any assets to be used as loan collateral required by the department.

(4) Preliminary construction plans, including a site plan and any normally required engineering.

(5) Preliminary title report for any property used as loan collateral.

(6) A feasibility study containing sufficient information and detail to demonstrate that the project is engineeringly and financially feasible.

(7) Evidence of compliance with the California Environmental Quality Act [Division 13 (commencing with Section 21000) of the Public Resources Code].

(8) A list of all costs incurred by the borrower in processing and obtaining loan proceeds.

(9) The proposed method and means of retiring the loan, meeting other financial obligations of the project, and, if the project is to be undertaken with funds in addition to the construction loan applied for, a funding plan indicating the sources of such additional construction funds.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3, 76.4 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5173. Application Review.

(a) The borrower's formal application will be judged as to the following principal considerations:

(1) Engineering feasibility, including a determination as to whether or not the project can be developed within the total amount of funds to be made available.

(2) Financial feasibility, including an analysis of the availability of capital to finance construction to completion, market analysis or market survey to determine the financial feasibility of the project, anticipated berthing and other charges used in estimating revenues, and evaluation of the sufficiency of revenues to cover annual costs on a year–by–year basis, including the amortization of the applied–for loan.

(b) Upon request of the applicant, the department may issue a letter of intent, explaining the availability of State funds, the status of the loan application and other requirements necessary for the approval of the loan.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3, 76.4, 76.5 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5174. Priority.

When considering applications, the department shall, in addition to priorities set forward in Sections 76 through 77.1 of the Harbors and Navigation Code, rank borrowers based upon the following; however, in no case shall the department make a loan to any recreational marina that restricts access or bars the public other than in ways that are lawful and consistent with general commercial business practices:

(a) First priority shall be given to projects based upon issues of the health and safety of boaters using the facilities.

(b) Next, priority will be given for completion of projects that are being phase–funded.

(c) Next, priority shall be given to projects that are receiving significant capital investment funds from borrowers in addition to loan funds.

(d) Next, priority shall be given based upon relative demand for facilities in the market area. Consideration shall be given to:

(1) Population size of the market area.

(2) Similar facilities in the market area.

(3) Boating activity in the market area.

(e) In the event that a priority between applications cannot be established by subsections (a) through (c), priority will be given to borrowers with the greatest ability to repay the loan. Evaluation of the borrower's ability to repay shall be based on:

(1) The department's relative security position.

(2) The loan–to–value (LTV) ratio.

(3) The borrower's audited financial statements for the three years immediately preceding the application, if available.

i. Each of these statements shall consist of a balance sheet, an income statement, and a statement of changes in financial position, all of which shall have been prepared according to generally accepted accounting principles.

ii. If the latest complete financial statement is more than six months old, an interim financial statement not older than sixty days shall be included.

(4) Other information acceptable to the department, if financial statements are not available, which establishes a financial ability to repay the loan, such as:

i. Federal income tax returns, filed with the application, and

ii. Credit reports from credit reporting agencies.

(5) An appraisal report showing the current market value of real and personal property which is suitable as collateral.

(6) The type and liquidity of the collateral.

(f) In the event that a priority between applications cannot be established by subsections (a) through (d), priority will be given to those applications with the smallest dollar value, in order to allow the maximum number of projects to be made within the limits of the Recreational Marina Loan Program.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3, 76.4, 76.5 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7–2–2001; operative 8–1–2001 (Register 2001, No. 27).

§ 5175. Loan Terms and Conditions.

Loan Terms and conditions, in addition to those specified in Sections 76 through 77.1 of the Harbors and Navigation Code, shall also include the following provisions:

(a) The borrower shall establish and capitalize a reserve fund in an amount and under terms and conditions specified by the department.

(1) The reserve fund shall be an interest–bearing account.

(2) In order to withdraw funds from the reserve fund, the signature of the director, or his or her designee, shall be required.

(3) All funds remaining in the reserve fund account shall be returned to the borrower upon full performance of the loan contract. However, unless and until all reserve funds, including accumulated interest, are first

committed to improvements at the marina, the borrower may not apply for additional department funding for any project within the marina for a period of five years beginning on the last date any reserve funds are returned to the borrower.

(b) The loan shall be secured by collateral equal to or greater than 110 percent of the loan amount, such as, but not limited to, a mortgage or security interest in real estate, and buildings or personal property of the borrower. These items may only be subject to encumbrances that the department may approve, such as, assignment or pledges of leases, and personal or corporate guarantees. Only the unencumbered equity portion of the property accepted as collateral shall be considered as collateral. Personal guarantees of the principals shall be required, unless reasons satisfactory to the department are presented that justify not requiring such guarantees. The value of the collateral shall be subject to reappraisal as requested by the department from time to time at its discretion, and if, as a result of such reappraisal, it is determined that the value of the collateral has dropped below 110 percent of the then-outstanding loan amount, the borrower shall provide additional collateral as security as required by the department.

(c) Real estate or stationary machinery or equipment pledged as a significant portion of collateral for repayment of a guaranteed loan shall be located within the State of California. Real estate pledged as collateral shall not include land that has been used as a solid waste disposal site. Any appraisal of property shall be conducted by a licensed appraiser acceptable to the borrower and the department.

(d) The borrower shall obtain and maintain, throughout the duration of the loan, fire and extended coverage insurance in an amount equal to 100 percent of the current replacement cost of all improvements which are part of the collateral, with the department named as additional insured.

(e) The borrower will obtain insurance to cover liability arising from design, planning, construction, maintenance or operation of the project, with the department named as additional insured, in the following minimum amounts:

(1) Bodily injury $300,000 each person, $1,000,000 each occurrence.

(2) Property and product damage $500,000 each occurrence, $1,000,000 each aggregate.

(f) The loan shall become due and payable in full upon transfer of the marina, unless such transfer is:

(1) By reason of death of the borrower, and the marina is transferred to the borrower's heirs.

(2) Transfer is to another business entity controlled by the borrower, provided that the transaction does not result in a material change in control or ownership of the recreational marina and collateral associated with the loan.

(g) The loan shall not be subordinated to any future loans obtained by a private marina owner except in those cases involving loans acquired for refinancing previous senior loans.

(h) A provision that the department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and copy any records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated.

(i) A provision that the borrower agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3, 76.6 and 85.2, Harbors and Navigation Code; and Department of General Services (DGS), Standard Agreement Language, as found in GTC 699 (and as may be subsequently amended by DGS).

HISTORY

1. New section filed 7-2-2001; operative 8-1-2001 (Register 2001, No. 27).

§ 5176. Default Remedies.

Upon the occurrence of a default, the department:

(a) Has and may exercise all rights and remedies accorded to the department by law, including but not limited to the provisions and remedies contained in the California Uniform Commercial Code;

(b) May declare all unperformed obligations, in whole or in part, of borrower immediately due and payable without demand or notice;

(c) May require borrower to take any and all action necessary to transfer the collateral in an amount equal to the unpaid balance of the loan to the secured party;

(d) May deposit all funds obtained from the sale of collateral, less reasonable costs of recovery or maintenance of property, to the Harbors and Watercraft Revolving Fund.

NOTE: Authority cited: Sections 63.9(e) and 76.8, Harbors and Navigation Code. Reference: Sections 76.3, 77.1 and 85.2, Harbors and Navigation Code.

HISTORY

1. New section filed 7-2-2001; operative 8-1-2001 (Register 2001, No. 27).

Article 2. Vessel Waste Disposal

§ 5200. Shoreside Facilities for Removing Waste from Vessel Holding Tank.

NOTE: Authority cited: Sections 38, 63.9 and 669, Harbors and Naigation Code. Reference: Section 654.1, Harbors and Navigation Code.

HISTORY

1. Repealer of Article 2 (§§ 5500 through 5511) and new Article 2 (§ 5200) filed 5-11-71; effective thirtieth day thereafter (Register 71, No. 20). For history of former Article 2, see Registers 62, No. 22; 66, No. 43; 69, No. 3.
2. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
3. Amendment filed 2-16-79 as procedural and organizational; effective upon filing (Register 79, No. 7).
4. Amendment of subsection (a) filed 9-13-80; effective thirtieth day thereafter (Register 80, No. 20).
5. Order of Repeal of Article 2 (Section 5200) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

Article 3. Boating Accident and Casualty Reporting

§ 6500. Purpose.

HISTORY

1. Amendment filed 5-11-71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Register 66, No. 43.
2. Repealer and new section filed 10-3-73 as an emergency; effective upon filing (Register 73, No. 40).
3. Certificate of Compliance filed 11-30-73 (Register 73, No. 48).
4. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 6501. Applicability.

(a) This article applies to each vessel used on waters subject to the jurisdiction of the State of California and on the high seas for vessels whose last port of call was within the State of California that:

(1) Is used by its operator for recreational purposes; or

(2) Is required to be numbered under Section 9850 of the California Vehicle Code.

(b) This article does not apply to a vessel required to have a certificate of inspection under Chapter 1 of Title 46, Code of Federal Regulations.

NOTE: Authority cited: Section 656, Harbors and Navigation Code. Reference: Section 656, Harbors and Navigation Code.

HISTORY

1. New section filed 10-3-73 as an emergency; effective upon filing (Register 73, No. 40).
2. Certificate of Compliance filed 11-30-73 (Register 73, No. 48).
3. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).

§ 6502. Immediate Notification of Death or Disappearance.

(a) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator shall, without delay, by the quickest means available, notify the Department of

Boating and Waterways and the nearest enforcement agency having jurisdiction over the waterbody of:

(1) The date, time, and exact location of the occurrence;

(2) The name of each person who died or disappeared;

(3) The registration number or name of the vessel as documented, and

(4) The names and addresses of the owner and operator.

(b) When the operator of a vessel cannot give the notice required by paragraph (a) of this section, each person on board the vessel shall notify the Department of Boating and Waterways and the enforcement agency having jurisdiction over the waterbody or determine that the notice has been given.

NOTE: Authority cited: Section 656, Harbors and Navigation Code. Reference: Section 656, Harbors and Navigation Code.

HISTORY

1. New section filed 10–3–73 as an emergency; effective upon filing (Register 73, No. 40).
2. Certificate of Compliance filed 11–30–73 (Register 73, No. 48).
3. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
4. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6503. Peace Officer Reports to Department.

Pursuant to section 656(d) of the Harbors and Navigation Code, a peace officer or harbor policeman, upon receiving an initial report of a casualty involving the death or disappearance of a person as a result of a boating occurrence, shall immediately forward such report, by quickest means available, to the Department of Boating and Waterways in Sacramento.

NOTE: Authority cited: Section 656, Harbors and Navigation Code. Reference: Section 656, Harbors and Navigation Code.

HISTORY

1. New section filed 10–3–73 as an emergency; effective upon filing (Register 73, No. 40).
2. Certificate of Compliance filed 11–30–73 (Register 73, No. 48).
3. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
4. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
5. Amendment replacing "656(e)" with "656(d)" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 6504. Boat Accident Reports in Writing.

(a) The operator(s) or owner(s) of the boat(s) shall, in addition to the report required by section 6502, submit a written report(s) on forms provided by the Department of Boating and Waterways, directly to the State of California, Department of Boating and Waterways, to the address shown on the forms when, as a result of an occurrence that involves the vessel or its equipment:

(1) A person dies;

(2) A person is injured and requires medical treatment beyond first aid;

(3) Damage to the vessel and other property damage totals more than $500, or there is a complete loss of a vessel; or

(4) A person disappears from the vessel under circumstances that indicate death or injury.

(b) A report required by this section must be made within forty–eight hours of the occurrence if:

(1) A person dies within twenty–four hours of the occurrence;

(2) A person disappears;

(3) A person is injured and receives medical treatment beyond first aid.

(c) A report required by this section must be made within ten days of the occurrence if an earlier report is not required by this section if:

(1) A person dies more than twenty–four hours after the occurrence;

(2) Damage to the vessel and other property damage totals more than $500, or there is a complete loss of a vessel.

NOTE: Authority cited: Section 656, Harbors and Navigation Code. Reference: Section 656, Harbors and Navigation Code.

HISTORY

1. New section filed 10–3–73 as an emergency; effective upon filing (Register 73, No. 40).
2. Certificate of Compliance filed 11–30–73 (Register 73, No. 48).
3. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
4. Amendment filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
5. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
6. Amendment of subsection (a)(2) replacing "$200" with "$500"; subsection (b) replacing "article" with "section"; subsection (c) replacing "unless" with "if"; and subsection (c)(2) replacing "$200" with "$500" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
7. Change without regulatory effect amending subsection (a) filed 4–30–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 18).

§ 6505. Content.

Each accident report must be in writing, dated upon completion, and signed by the person who prepared it, and must contain, if available, at least the following information about the accident:

(a) The registration numbers or names as documented of each vessel involved.

(b) The name and address of each owner of each vessel involved.

(c) The name of the nearest city or town, the county, the state, and the body of water.

(d) The time and date the casualty or accident occurred.

(e) The location on the water.

(f) The visibility, weather, and water conditions.

(g) The estimated air and water temperatures.

(h) The name, address, age, or date of birth, telephone number, vessel operating experience, and boating safety training of the operator making the report.

(i) The name and address of each operator of each vessel involved.

(j) The number of persons on board and towed on skis by each vessel.

(k) The name, address, and date of birth of each person who died, was injured or disappeared.

(*l*) The cause of each death.

(m) Weather forecasts available to, and weather reports used by, the operator before and during the use of each vessel.

(n) The name and address of each owner of property involved.

(o) The number, availability, and use of personal flotation devices.

(p) The type and size of each fire extinguisher used.

(q) The nature and extent of each injury.

(r) A description of all property damage and vessel damage with an estimate of the cost of all repairs.

(s) A description of each equipment failure that caused or contributed to the cause of the casualty or accident.

(t) A description of the vessel casualty or accident.

(u) The type of vessel operation (cruising, drifting, fishing, hunting, skiing, racing or other) and the type of accident (capsizing, sinking, fire, explosion, or other).

(v) The opinion of the person making the report as to the cause of the accident.

(w) The make, model, type (open, cabin, house, or other), beam width at widest point, length, depth from transom to keel, horsepower, propulsion (outboard, inboard, inboard/outdrive, sail, or other), fuel (gas, diesel, or other), construction (wood, steel, aluminum, plastic, fiberglass, or other), and year built (model year) of the reporting operator's vessel.

(x) The name, address, and telephone number of each witness.

(y) The manufacturer's hull identification number, if any, of reporting operator's vessel.

(z) The name, address, and telephone number of the person submitting the report.

NOTE: Authority cited: Section 656, Harbors and Navigation Code. Reference: Section 656, Harbors and Navigation Code.

HISTORY

1. New section filed 10–3–73 as an emergency; effective upon filing (Register 73, No. 40).
2. Certificate of Compliance filed 11–30–73 (Register 73, No. 48).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

Article 4. Equipment Requirements

§ 6550. Purpose.

HISTORY

1. Repealer of Article 4 (§§ 6550 through 6576) and new Article 4 (§§ 6550 through 6576) filed 5–11–71; effective thirtieth day thereafter (Register 70, No. 20). For prior history, see Registers 63, No. 19; 65, Nos. 13 and 15; 66, No. 43; 67, No. 23.
2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 6550.5. Scope of Articles 4 and 5.

(a) The regulations in this article and in Article 5 apply to vessels operating on the waters of this State that are defined in Government Code Section 170. All vessels complying with the construction and equipment requirements of the International Regulations for Preventing Collisions at Sea, 1972, are considered to be in compliance with these Rules.

(b) Where federal law, including the United States Coast Guard regulations, provides an exemption to any of the provisions of the federal equipment or operation requirements which conform to the state requirements set forth in Articles 4 and 5 of this chapter, such exemption shall also apply to the state requirements.

(c) Any peace officer or harbor policeman authorized to enforce the provisions of Chapter 5 of the Harbors and Navigation Code may inspect a vessel using California waterways for compliance with safety laws, rules, and/or regulations where he has probable cause or a reasonable suspicion to believe that a violation of such laws, rules, or regulations exists.

(d) Any peace officer authorized to enforce the provisions of Chapter 5 of the Harbors and Navigation Code may order the operator of an unsafe vessel to remove such vessel to the shore or to a safe moorage or anchorage in accordance with the requirements of this subsection. An officer may order an unsafe vessel so removed where it is being operated with one or more of the following hazardous conditions, where such conditions cannot be corrected on the spot, and where, in the judgment of the officer, continued operation of the vessel would create an immediate danger to life, limb, or property.

(1) Boat being used without sufficient personal flotation devices, as prescribed by Section 6565 of this chapter;

(2) Boat being used without sufficient firefighting devices, as prescribed by Section 6569 of this chapter;

(3) Boat does not display required navigation lights between sunset and sunrise, as prescribed by Section 6600.1 of this Chapter;

(4) Boat has fuel leakage from either the fuel system or engine, or both;

(5) Boat has accumulation of fuel in bilges or compartment other than a fuel tank;

(6) Boat does not have legal and serviceable ventilation system, as prescribed by Section 6575 of this chapter;

(7) Boat does not have proper backfire flame control system, as prescribed by Section 6574 of this chapter;

(8) Boat is overloaded to such an extent that there exists so little freeboard the danger of sinking or capsizing may be imminent.

Any person operating an unsafe vessel, as specified in this subsection, shall remove it to the shore or to a safe moorage or anchorage as directed by the peace officer.

NOTE: Authority cited: Sections 662 and 655, Harbors and Navigation Code. Reference: Sections 652, 655, 663, 663.5, and 663.6, Harbors and Navigation Code; and PL 96–591, Rule 1(b)(ii).

HISTORY

1. Amendment filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Amendment of subsections (a), (d)(8) and (e) filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Order of Repeal of subsection (e) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).
4. Amendment of subsections (a) and (d)(3) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 34).
5. Amendment of subsection (d)(2) filed 11–25–87; operative 12–25–87 (Register 87, No. 49).

§ 6551. Invalidity of Provision or of Application to Particular Person or Circumstance.

If any provision of this article, or its application to any person or circumstance, is held invalid the remainder of this article, and the application of its provisions to any other person or circumstance, is not affected.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Sections 650 and 652, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6552. Definitions.

As used in Articles 4 and 5:

(a) "Approved" means approved by the Commandant of the United States Coast Guard.

(b) "Barge" means any nonself–propelled vessel.

(c) "Carrying passengers for hire" means the carriage of a person by a vessel for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

(d) "Ferry" includes a vessel having provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel. "Ferry" does not include a vessel navigating the water of the ocean.

(e) "Fire extinguisher" means a marine–type fire extinguisher, as approved by the Commandant of the Coast Guard.

(f) "High Seas" means:

(1) Crescent City Harbor. Those waters outside of a line drawn from Crescent City Entrance Light to the southeasternmost extremity of Whaler Island.

(2) Arcata–Humboldt Bay. Those waters outside of a line drawn from Humboldt Bay Entrance Light 4 to Humboldt Bay Entrance Light 3.

(3) Noyo River. Those waters outside of a line drawn from Noyo River Entrance Daybeacon 4 to Noyo River Entrance Light 5.

(4) Albion River. Those waters outside of a line drawn on an axis of 030 true through Albion River Light 1 across Albion Cove.

(5) Bodega Bay. Those waters outside of a line drawn from the seaward extremity of Bodega Harbor North Breakwater to Bodega Harbor Entrance Light 1.

(6) Tomales Bay. Those waters outside of an east–west line drawn from Sand Point to Avalis Beach.

(7) San Francisco Harbor. Those waters outside of a straight line drawn from Point Bonita Light through Mile Rocks Light to the shore.

(8) Pillar Point Harbor. Those waters outside of a line drawn from Pillar Point Harbor Light 6 to Pillar Point Harbor Entrance Light.

(9) Santa Cruz Harbor. Those waters outside of a line drawn from the seaward extremity of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater Light; thence to Santa Cruz Light.

(10) Moss Landing Harbor. Those waters outside of a line drawn from the seaward extremity of the pier located 0.3 mile south of Moss Landing Harbor entrance to the seaward extremity of the Moss Landing Harbor North Breakwater.

(11) Monterey Harbor. Those waters outside of a line drawn from Monterey Harbor Light 6 to the northern extremity of Monterey Municipal Wharf 2.

(12) Estero–Morro Bay. Those waters outside of a line drawn from the seaward extremity of the Morro Bay East Breakwater to the Morro Bay West Breakwater Light.

(13) San Luis Obispo Bay. Those waters outside of a line drawn from the southernmost extremity of Fossil Point to the seaward extremity of Whaler Island Breakwater.

(14) Santa Barbara Harbor. Those waters outside of a line drawn from Santa Barbara Harbor Light 4 to Santa Barbara Harbor Breakwater Light.

(15) Ventura Marina. Those waters outside of a line drawn from Ventura Marina South Jetty Light 6 to Ventura Marina Breakwater South Light 3; thence to Ventura Marina North Jetty Light 7.

(16) Channel Islands Harbor.

(A) Those waters outside of a line drawn from Channel Islands Harbor South Jetty Light 2 to Channel Islands Harbor Breakwater South Light 1.

(B) Those waters outside of a line drawn from Channel Islands Harbor Breakwater North Light to Channel Islands Harbor North Jetty Light 5.

(17) Port Hueneme. Those waters outside of a line drawn from Port Hueneme East Jetty Light 4 to Port Hueneme West Jetty Light 3.

(18) Marina del Rey.

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(A) Those waters outside of a line drawn from Marina del Rey Breakwater South Light 1 to Marina del Rey Light 4.

(B) Those waters outside of a line drawn from Marina del Rey Breakwater North Light 2 to Marina del Rey Light 3.

(C) Those waters outside of a line drawn from Marina del Rey Light 4 to the seaward extremity of the Ballona Creek South Jetty.

(19) Redondo Harbor. Those waters outside of a line drawn from Redondo Beach East Jetty Light 2 to Redondo Beach West Jetty Light 3.

(20) San Pedro Bay–Anaheim Bay.

(A) Those waters outside of a line drawn across the seaward extremities of Anaheim Bay Entrance Jetties; thence to Long Beach Breakwater East End Light 1.

(B) Those waters outside of a line drawn from Long Beach Channel Entrance Light 2 to Long Beach Light.

(C) Those waters outside of a line drawn from Los Angeles Main Entrance Channel Light 2 to Los Angeles Light.

(21) Newport Bay. Those waters outside of a line drawn from Newport Bay East Jetty Light 4 to Newport Bay West Jetty Light 3.

(22) Santa Catalina Island. Those waters within the harbors of Santa Catalina Island.

(23) Dana Point Harbor. Those waters outside of a line drawn from Dana Point Jetty Light 6 to Dana Point Breakwater Light 5.

(24) Oceanside Harbor. Those waters outside of a line drawn from Oceanside South Jetty Light 4 to Oceanside Breakwater Light 3.

(25) Mission Bay. Those waters outside of a line drawn from Mission Bay South Jetty Light 2 to Mission Bay North Jetty Light 1.

(26) San Diego Harbor. Those waters outside of a line drawn from Zuniga Jetty Light "V" to Zuniga Jetty Light "Z"; thence to Point Loma Light.

(27) Other Entrances. At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this section, the waters outside of a line approximately parallel with the general trend of the shore, drawn through the outermost buoy or buoys or other aid to navigation of any system of aids.

(g) "Inland Waters" means any waters within the territorial limits of California other than those that are defined in Section 6552(f) of these regulations as the "high seas."

(h) "Machinery" includes an inboard or outboard engine and any other type of motor or mechanical device capable of propelling a vessel.

(i) "Nonself–propelled vessel" means a vessel without sufficient means for self–propulsion and is required to be towed.

(j) "Operator" means the person who operates or who has charge of the navigation or use of a vessel.

(k) "Passenger" means every person, other than the master and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.

(*l*) "Power driven vessel" means any vessel propelled by machinery.

(m) "Sailing vessel" means any vessel under sail provided that propelling machinery, if fitted, is not being used.

(n) "Ship's lifeboat" means a lifeboat used solely for lifesaving purposes and does not include dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

(o) "Whistle" means any sound signaling appliance capable of producing the prescribed blasts.

(p) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for–hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(q) "Vessel" includes every description of water craft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water;

(r) "Seaplane" includes any aircraft designed to maneuver on the water.

(s) "Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restricts maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability;

(t) "Vessel not under command" means a vessel which, through some exceptional circumstance, is unable to maneuver as required by these Rules, and is, therefore, unable to keep out of the way of another vessel.

(u) "Vessel restricted in her ability to maneuver" means a vessel which, from the nature of her work, is restricted in her ability to maneuver as required by these Rules, and is, therefore, unable to keep out of the way of another vessel; vessels restricted in their ability to maneuver include, but are not limited to:

(1) A vessel engaged in laying, servicing, or picking up a navigation mark, submarine cable, or pipeline;

(2) A vessel engaged in dredging, surveying, or underwater operations;

(3) A vessel engaged in replenishment or transferring persons, provisions, or cargo while underway;

(4) A vessel engaged in the launching or recovery of aircraft;

(5) A vessel engaged in minesweeping operations; and

(6) A vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.

(v) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(w) "Length" and "breadth" of a vessel mean her length overall and greatest breadth.

(x) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.

(y) "Restricted visibility" means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar causes.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment of subsection (f) filed 10–13–72; effective thirtieth day thereafter (Register 72, No. 42).
2. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
3. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
4. Amendment filed 4–26–78; effective thirtieth day thereafter (Register 78, No. 17).
5. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
6. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
7. Amendment of subsection (f) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).

§ 6553. Classes of Motorboats.

HISTORY

1. Repealer filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).

§ 6554. Measurement.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6555. Equipment for Sound Signals.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and PL 96–591, Rule 33.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

3. Repealer filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6556. Whistle or Other Sound–Producing Mechanical Appliance—While Operating on Inland Waters.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and PL 96–591, Annex II.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6557. Equipment for Sound Signals—While Operating on the "High Seas."

NOTE: Authority cited: Sections 652, 655.3 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Repealer filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6557.1. Technical Details of Sound Signal Appliances Required for Use on Vessels Operating on the "High Seas."

NOTE: Authority cited: Sections 652, 655.3 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Repealer filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6558. Foghorn.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6559. Foghorn—While Operating on Inland Waters.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6560. Foghorn—While Operating on the "High Seas."

HISTORY

1. Repealer filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).

§ 6561. Bell and Other Fog Sound Signal Devices.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6562. Bell and Other Fog Sound Signal Devices—While Operating on Inland Waters.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6563. Bell and Other Sound Signal Devices—While Operating on the "High Seas."

HISTORY

1. Repealer filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).

§ 6564. Personal Flotation Devices.

Pursuant to Section 652, Harbors and Navigation Code, a vessel being operated on the waters of this State shall carry personal flotation equipment as prescribed in Sections 6565 to 6566, inclusive.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 4–5–72; effective thirtieth day thereafter (Register 72, No. 15).
2. Amendment filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34).
3. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
4. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6565. Personal Flotation Devices for Boats.

In accord with Federal regulations (33 CFR Part 175), a boat or recreational boat shall be equipped with personal flotation devices as set forth in sections 6565.2 through 6565.9.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34). For former section, see Register 72, No. 15.
2. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
4. Amendment substituting "6565.2" for "6565.1" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 6565.1. Applicability.

NOTE: Authority cited: Sections 38, 82, 652, 655.3 and 669, Harbors and Navigation Code. Reference: Division 3, Chapter 5, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 6565.2. Definitions.

As used in sections 6565.2 through 6565.8:

(a) "Boat" means any vessel manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.

(b) "Recreational boat" means any vessel manufactured or used primarily for noncommercial use; or leased, rented, or chartered to another for the latter's noncommercial use. It does not include a vessel engaged in the carrying of six or fewer passengers.

(c) "Vessel" includes every description of watercraft other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

(d) "Use" means operate, navigate, or employ.

(e) "Passenger" means every person carried on board a vessel other than:

(1) The owner or his representative;

(2) The operator;

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(f) "Racing shell, rowing scull, racing canoes and racing kayak," means a manually–propelled boat that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment substituting "6565.2" for "6565.1" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
4. Amendment of first paragraph, subsection (f) and NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.3. Applicability.

Sections 6565.2 through 6565.8 apply to all recreational boats that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel except racing shells, rowing sculls, racing canoes, and racing kayaks.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment substituting "6565.2" for "6565.1" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
4. Amendment of section and NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.4. Definitions.

As used in sections 6565.2 through 6565.8:

(a) "Personal flotation device" means a device that is approved by the Commandant under 46 CFR Part 160.

(b) "PFD" means "personal flotation device."

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code.Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment substituting "6565.2" for "6565.1" filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
4. Amendment of first paragraph and NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.5. Personal Flotation Devices Required.

Except as provided in Section 6565.6:

(a) Effective January 1, 1998, no person may use a recreational boat unless at least one PFD of the following types is on board for each person:

(1) Type I PFD,

(2) Type II PFD, or

(3) Type III PFD.

(b) Prior to January 1, 1998, a Type IV may be carried in lieu of any Type I, II, or III PFD, for each person on board a recreational boat less than 16 feet in length or any canoe or kayak of any length.

(c) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless

(1) One Type IV PFD is on board, and

(2) At least one PFD of the following types is on board for each person:

(i) Type I PFD;

(ii) Type II PFD; or

(iii) Type III PFD.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Change without regulatory effect amending subsections (a)(1)–(a)(3) filed 7–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 28).
4. Editorial correction of printing errors (Register 92, No. 28).
5. Amendment of section and NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.6. Exceptions.

A Type V PFD may be carried in lieu of any PFD required under Section 6565.5 provided:

(a) The approval label on the Type V PFD indicates that the device is approved:

(1) For the activity in which the boat is being used; or

(2) As a substitute for a PFD of the Type required on the boat in use;

(b) The PFD is used in accordance with any requirements on the approval label; and

(c) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. New subsection (b) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
4. Repealer and new section filed 10–17–91; operative 11–18–91 (Register 92, No. 30).
5. Amendment of section and NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.7. Stowage.

(a) No person may use a recreational boat unless each Type I, II or III PFD required by Section 6565.5 or equivalent type allowed by 6565.6 is readily accessible.

(b) No person may use a recreational boat unless each Type IV PFD required by Section 6565.5 or equivalent type allowed by 6565.6 is immediately available.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment filed 10–17–92; operative 11–18–91 (Register 92, No. 30).
4. Amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.8. Conditions; Size and Fit; Approval Marking.

No person may use a recreational boat unless each PFD required by Section 6565.5 or allowed by Section 6565.6 is:

(a) In serviceable condition;

(b) Of an appropriate size and fit for the intended wearer, as marked on the approval label; and

(c) Legibly marked with its approval number, as specified in 46 CFR Part 160.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment filed 10–17–92; operative 11–18–91 (Register 92, No. 30).
4. Amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6565.9. Personal Flotation Device Equivalents.

NOTE: Authority cited: Sections 652, 655.3 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Repealer filed 10–17–91; operative 11–18–91 (Register 92, No. 30).

§ 6566. Life Preservers and Lifesaving Equipment—Passengers–for–Hire Vessels.

(a) In accordance with Federal regulation (46 CFR, Part 25.25), commercial vessels and those carrying passengers for hire shall be equipped with life preservers and other lifesaving equipment as follows:

(1) Application. This section applies to each vessel to which this section applies, except:

(A) Vessels used for noncommercial use;

(B) Vessels leased, rented, or chartered to another for the latter's noncommercial use;

(C) Commercial vessels propelled by sail not carrying passengers for hire; or

(D) Commercial barges not carrying passengers for hire.

(2) Definitions. As used in this section:

(A) "Approved" means approved by the Commandant under 46 CFR, Part 160.

(B) "Use" means operate, navigate, or employ.

(3) Life preservers and other lifesaving equipment required.

(A) No person may operate a vessel to which this section applies unless it meets the requirements of this section.

(B) Each vessel not carrying passengers for hire less than 40 feet in length, must have at least one life preserver, buoyant vest, or special purpose water safety buoyant device intended to be worn approved by the Commandant under 46 CFR, Part 160, of a suitable size for each person on board. Kapok and fibrous glass life preservers that do not have plastic–covered pad inserts are not acceptable as equipment required by this paragraph.

(C) Each vessel carrying passengers for hire and each vessel 40 feet in length or longer not carrying passengers for hire must have at least one approved life preserver of a suitable size for each person on board. Kapok and fibrous glass life preservers which do not have plastic–covered pad inserts are not acceptable as equipment required by this paragraph.

(D) Each vessel 26 feet in length or longer must have at least one ring life buoy approved under Title 46, CFR, Subparts 160.009 or 160.050, in addition to the equipment required in paragraph (B) or (C) of this section.

(E) On each vessel, regardless of length and regardless of whether carrying passengers for hire, an approved commercial hybrid PFD may be substituted for a life preserver, buoyant vest, or marine buoyant device required by paragraphs (B) or (C) of this section, only if it is:

1. Worn when the vessel is underway and the intended wearer is not within an enclosed space;

2. Used in accordance with the conditions marked on the PFD and in the owner's manual; and

3. Labeled for use on uninspected commercial vessels.

(F) Each vessel not carrying passengers for hire may substitute an exposure suit for a life preserver, buoyant vest, or marine buoyant device required under paragraphs (B) or (C) of this section. Each exposure suit carried in accordance with this paragraph must be of a type approved under Title 46, CFR, Subpart 160.071.

(4) Marking. The lifesaving equipment required by this section must be legibly marked as specified in 46 CFR, Part 160.

(5) Storage.

(A) The lifesaving equipment designed to be worn as required in subsection (3), (B) (C) and (E) must be readily accessible.

(B) Lifesaving equipment designed to be thrown as required in subsection (3) (D) must be immediately available.

(6) Condition. The lifesaving equipment required by this section must be in serviceable condition.

(7) Retroreflective material for personal flotation devices.

(A) Each life preserver, each marine buoyant device intended to be worn, and each buoyant vest carried on a vessel to which this section applies, must have Type I retroreflective material that is approved under 6 CFR, Subpart 164,018.

(B) Each item required to have retroreflective material must have at least 200 sq. cm (31 sq. in.) of material attached to the front side, at least 200 sq. cm of material on its back side, and if the item is reversible, at least 200 sq. cm of material on each of its reversible sides. The material attached on each side of the item must be divided equally between the upper quadrants of the side, and the material in each quadrant must be attached as closely as possible to the shoulder area of the item.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Sections 650 and 652, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34). For former section, see Register 72, No. 15.
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
4. Amendment filed 11–25–87; operative 12–25–87 (Register 87, No. 49).

§ 6567. Life Preserver and Other Lifesaving Equipment—Class 3(b) Motorboat.

HISTORY

1. Repealer filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34).

§ 6568. Life Preserver and Other Lifesaving Equipment—Barge Carrying Passengers for Hire.

HISTORY

1. Repealer filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34).

§ 6568.1. Lifesaving Devices for Boats Other Than Motorboats.

HISTORY

1. New section filed 4–5–72; effective thirtieth day thereafter (Register 72, No. 15).
2. Repealer filed 8–21–73; designated effective 10–1–73 (Register 73, No. 34).
3. Editorial correction deleting text (Register 95, No. 17).

§ 6569. Fire Extinguishing Equipment.

Pursuant to Section 652, Harbors and Navigation Code, a boat being operated on the waters of this State shall be provided with fire extinguishers as prescribed in Sections 6570 to 6573, inclusive, which shall at all times be kept in condition for immediate and effective use, and shall be so placed as to be readily accessible.

NOTE: Authority cited: Sections 652 and 669, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6570. Fire Extinguishing Equipment—Definitions.

(a) A "B" type fire extinguisher means a fire extinguisher system suitable for extinguishing fires involving flammable liquids, greases, etc.

(b) "Hand–portable fire extinguisher" means a fire extinguisher of either of the following minimum sizes:

Size	*Foam gallons*	*Carbon dioxide, pounds*	*Dry chemicals, pounds*	*Freon, pounds*
I	1 1/4	4	2	2 1/2
II	2 1/2	15	10	—

(c) "Semiportable fire extinguisher" means a fire extinguisher system of the following size or larger which is fitted with suitable hose and nozzle or other practicable means so that all portions of the space concerned may be covered.

Size	*Foam gallons*	*Carbon dioxide, pounds*	*Dry chemicals, pounds*
III	12	35	20

(d) "Fixed fire extinguishing system" means a fire extinguishing system of an approved carbon dioxide type, designed and installed in agreement with the applicable provisions of subpart 76.15 of subchapter H of Title 46, Code of Federal Regulations, as amended.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment of subsection (b) filed 10–13–72; effective thirtieth day thereafter (Register 72, No. 42).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6571. Fire Extinguishing Equipment—Vaporizing—Liquid Type.

A vaporizing–liquid type fire extinguisher containing carbon tetrachloride or chlorobromomethane or other toxic vaporizing liquids are not acceptable as equipment required by Section 6573.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).

2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6572. Fire Extinguishing Equipment—Markings Required.

(a) Each hand portable fire extinguisher and semiportable fire extinguishing system shall have permanently attached thereto a metallic name plate giving the

(1) Name of the item

(2) Rated capacity in gallons, quarts, or pounds

(3) Name of the person or firm for whom approved

(4) Address of the person or firm for whom approved, and

(5) The identifying mark of the actual manufacturer.

(b) Each hand portable fire extinguisher and semiportable fire extinguisher shall bear a label containing the "marine type" listing manifest issued by a recognized laboratory, as defined in 46 CFR 162.028–5 and 162.039–5. This label will include the classification of the extinguisher in accordance with the Coast Guard approval number, thus: "Marine Type USCG Type _____ , Approval No. 162.028/_____ , or 162.039/Ex. ____."

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).

2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6573. Fire Extinguishing Equipment—Requirements.

(a) Boat Propelled by Machinery Sixty–five Feet or Less in Length. A boat propelled by machinery 65 feet or less in length shall carry at least the minimum number of hand–portable fire extinguishers set forth in Table 2.

TABLE 2

Size of boat	*Length, feet*	*Minimum number of type B–I hand–portable fire extinguishers required* [1]	
		Without fixed fire extinguishing system in machinery space	*With fixed fire extinguishing system in machinery space*
Under 16	1		0
16 and over, but under 26	1		0
26 and over, but under 40	2		1
40 and over, but not over 65	3		2

[1]One type B–II hand–portable fire extinguisher may be substituted for two type B–I hand–portable fire extinguishers.

(1) Exceptions: A boat of any of the following types is not required to carry a fire extinguisher.

(A) Less than 26 feet in length, not carrying passengers for hire, propelled by an outboard motor, without permanently installed fuel tanks, and of a construction which will not permit the entrapment of explosive or flammable gasses or vapors.

(b) Boat Propelled by Machinery Over Sixty–Five Feet in Length. A boat propelled by machinery over 65 feet in length shall carry at least the minimum number of hand–portable fire extinguishers set forth in Table 3 and in addition shall carry:

(1) One type B–II hand–portable fire extinguisher for each 1,000 B.H.P. of the main engine or fraction thereof. However, not more than six such extinguishers need be carried.

(2) On boats propelled by machinery over 65 feet in length and over 300 gross tons, either one type B–III semi–portable fire extinguishing system shall be fitted, or alternatively, a fixed fire extinguishing system shall be fitted in the machinery space.

TABLE 3

Gross tonnage		*Minimum number of B–II hand–portable fire extinguishers*
Over	*Not over*	
—	50	1
50	100	2
100	500	3
500	1,000	6
1,000	—	8

(c) Barge Carrying Passengers.

(1) 65 Feet in Length or Less. A barge 65 feet in length or less carrying passengers, which is regularly operated with a boat propelled by machinery, shall be fitted with hand–portable fire extinguishers as required by Table 2 depending upon the length of the barge.

(2) Over 65 Feet in Length. A barge of over 65 feet in length carrying passengers, which is regularly operated with a boat propelled by machinery, shall be fitted with hand–portable fire extinguishers as required by Table 3, depending upon the gross tonnage of the barge.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 10–13–72; effective thirtieth day thereafter (Register 72, No. 42).

2. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).

3. Repealer of subsection (a)(1)(B) filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).

4. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6574. Backfire Flame Control.

Pursuant to Section 652, Harbors and Navigation Code, every gasoline engine installed in a boat after April 25, 1940, except outboard motors, shall be equipped with one of the following:

(a) Backfire flame arrestor, suitably secured to the air intake with flametight connection, that is approved or complies with SAE J–1928 or UL 1111 and marked accordingly.

(b) A reed valve assembly or an air and fuel induction system installed in accordance with SAE J–1928.

(c) Any attachment to the carburetor or location of the engine air induction system by means of which flames caused by engine backfire will be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons on board, or nearby vessels and structures. All attachments shall be of metallic construction with flametight connections and firmly secured to withstand vibration, shock, and engine backfire.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).

2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

3. Amendment of subsections (a) and (b) filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6575. Ventilation.

(a) Pursuant to Section 652, Harbors and Navigation Code, all boats propelled by machinery being operated on the waters of this State except open boats, and as provided in paragraphs (c) and (d) of this section, the construction or decking over of which is commenced after April 25, 1940, and which use fuel having a flashpoint of 110U F. or less, shall have at least 2 ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment. There shall be at least one exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one intake duct installed so as to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake. The cowls shall be located and trimmed for maximum effectiveness and in such a manner so as to prevent displaced fumes from being recirculated.

(b) As used in this section, the term "open boats" means those boats propelled by machinery with all engine and fuel tank compartments, and other spaces to which explosive or flammable gases and vapors from these compartments may flow, open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.

(c) Boats, as defined in the Federal Boat Safety Act of 1971, built after July 31, 1980, or which are in compliance with 33 CFR, Part 183, are excepted from these requirements.

(d) Boats, as defined in the Federal Boat Safety Act of 1971, built after July 31, 1978, are excepted from the requirements of paragraph (a) for fuel tank compartments that—

(1) Contain a permanently installed fuel tank if each electrical component is ignition protected in accordance with 33 CFR 183.410(a); and

(2) Contain fuel tanks that vent to the outside of the boat.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment of subsection(a) and new subsections (c) and (d) filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6575.1. Operator Responsibility.

No person may operate a boat built after July 31, 1980, that has a gasoline engine for electrical generation, mechanical power, or propulsion unless it is equipped with an operable ventilation system that meets the requirements of Section 6575.5(a), (b), (d), (e), and (f), and 6575.6(a).

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and 33 CFR 175.201.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6575.2. Applicability.

This regulation applies to all new boats that—

(a) Have gasoline engines for electrical generation, mechanical power, or propulsion; and

(b) Are built after July 31, 1980, except that a manufacturer may elect to comply with this subpart at any time after July 31, 1978.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and 33 CFR 183.601.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6575.3. Definitions.

"AMCA" means Air Moving and Conditioning Association.

"ASTM" means American Society for Testing and Materials.

"Fuel" means gasoline.

"Open to the atmosphere" means a compartment that has at least 15 square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

"UL" means Underwriters Laboratories, Incorporated.

NOTE: Authority cited: Sections 652 and 656.4, Harbors and Navigation Code. Reference: Sections 650 and 652, Harbors and Navigation Code; and 33 CFR 183.605.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Editorial correction of section number filed 4–12–84 (Register 84, No. 15).

§ 6575.4. Incorporation by Reference.

(a) The following standards are incorporated by reference. Copies may be obtained from the sources indicated. They are also available for inspection at the Department of Boating and Waterways; Archives, Secretary of State, 1020 "O" Street, Sacramento, California 95814; Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593–0001; and at the Office of the Federal Register Library, National Archives, Washington, D.C. 20408.

(1) AMCA Standard 210–74, Figure 12, dated 1974, Air Moving and Conditioning Association International, Inc., 30 West University Drive, Arlington Heights, Illinois 60004.

(2) ASTM Standard D–471–79 dated May 1979. American Society for Testing and Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428–2959.

(3) UL Standard 1128, dated August 23, 1977, published by Underwriters Laboratories, Incorporated, is available by contacting COMM–2000, 1414 Brook Drive, Downers Grove, Illinois 60515, telephone number 1 (888) 653–3503, or on the Internet: www.COMM–2000.com.

NOTE: Authority cited: Sections 652 and 656.4, Harbors and Navigation Code. Reference: Sections 650 and 652, Harbors and Navigation Code; and 33 CFR 183.607.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Amendment filed 11–25–87; operative 12–25–87 (Register 87, No. 49).
3. Change without regulatory effect amending section filed 4–30–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 18).

§ 6575.5. Powered Ventilation System.

(a) Each compartment in a boat that has a permanently installed gasoline engine with a cranking motor must—

(1) Be open to the atmosphere, or

(2) Be ventilated by an exhaust blower system.

(b) Each exhaust blower or combination of blowers must be rated an at air flow capacity not less than that computed by the formulas given in Table A, Column 2. Blower rating must be determined according to AMCA Standard 210–74, Figure 12, dated 1974, or UL Standard 1128 dated August 23, 1977.

FR=V/2 + 100 FO=0.2V+ 40 M

Table A

Col. 1[1]	*Col. 2*[2]	*Col. 3*[3]
Below 34	Fr=50	Fo=20
34 to 100	Fr=1.5V	Fo=0.6V
Over 100	Fr=V/2 + 100	Fo=0.2V + 40

[1] Net compartment volume of engine compartment and compartments open thereto (V) cubic feet.
[2] Rated blower capacity (Fr) cubic feet per minute.
[3] Blower system output (Fo) cubic feet per minute.

(c) Each exhaust blower system required by paragraph (a) (2) of this section must exhaust air from the boat at a rate which meets the requirements of Table A, Column 3, when the engine is not operating.

(d) Each intake duct for an exhaust blower must be in the lower one–third of the compartment and above the normal level of accumulated bilge water.

(e) More than one exhaust blower may be used in combination to meet the requirements of this section.

(f) Each boat that is required to have an exhaust blower must have a label that—

(1) Is located as close as practicable to each ignition switch;

(2) Is in plain view of the operator; and

(3) Has at least the following information: WARNING—GASOLINE VAPORS CAN EXPLODE. BEFORE STARTING ENGINE, OPERATE BLOWER FOR 4 MINUTES AND CHECK ENGINE COMPARTMENT BILGE FOR GASOLINE VAPORS.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and 33 CFR 183.610.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6575.6. Natural Ventilation System.

(a) Except for compartments open to the atmosphere, a natural ventilation system that meets the requirements of Section 6575.7 must be provided for each compartment in a boat that—

(1) Contains a permanently installed gasoline engine;

(2) Has openings between it and a compartment that requires ventilation, where the aggregate area of those openings exceeds two percent of

the area between the compartments, except as provided in paragraph (c) of this section;

(3) Contains a permanently installed fuel tank and an electrical component that is not ignition protected in accordance with 33 CFR 183.410(a);

(4) Contains a fuel tank that vents into that compartment; or

(5) Contains a nonmetallic fuel tank with an aggregate permeability rate of more than the greater of 1.2 grams of fuel loss in 24 hours, or 1.2 grams of fuel loss in 24 hours per cubic foot of net compartment volume. Reference fuel "C" at 40 C plus or minus 2 C from ASTM standard D–471–79, dated May, 1979, is to be used in determining the permeability rate.

(b) Each natural ventilation system must be constructed so that—

(1) Each supply opening required in Section 6575.7 is located on the exterior surface of a boat; or

(2) Air will flow into or out of the supply or exhaust openings required in Section 6575.7 when the boat is in a wind flowing from bow to stern at a velocity of ten miles per hour when the engine is not operating.

(c) An accommodation compartment above a compartment requiring ventilation that is separated from the compartment requiring ventilation by a deck or other structure is excepted from paragraph (a)(2) of this section.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and 33 CFR 183.620.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Amendment of subsections (a)(5) and (b)(1) filed 11–25–87; operative 12–25–87 (Register 87, No. 49).

§ 6575.7. Standards for Natural Ventilation.

(a) For the purpose of Section 6575.6, "natural ventilation" means an airflow in a compartment in a boat achieved by having—

(1) A supply opening or duct from the atmosphere or from a ventilated compartment or from a compartment that is open to the atmosphere; and

(2) An exhaust opening into another ventilated compartment or an exhaust duct to the atmosphere.

(b) Each exhaust opening or exhaust duct must originate in the lower third of the compartment.

[The next page is 483.]

(c) Each supply opening or supply duct and each exhaust opening or exhaust duct in a compartment must be above the normal accumulation of bilge water.

(d) Except as provided in paragraph (e) of this section, supply openings or supply ducts and exhaust openings or exhaust ducts must each have a minimum aggregate internal cross–sectional area calculated as follows: A = 5 ln (V/5); where:

(1) A is the minimum aggregate internal cross–sectional area of the openings or ducts in square inches;

(2) V is the net compartment volume in cubic feet, including the net volume of other compartments connected by openings that exceed two percent of the area between the compartments; and

(3) ln (V/5) is the natural logarithm of the quantity (V/5).

(e) The minimum internal cross–sectional area of each supply opening or duct and exhaust opening or duct must exceed 3.0 square inches.

(f) The minimum internal cross–sectional area of terminal fittings for flexible ventilation ducts installed to meet the requirements of paragraph (d) of this section must not be less than 80 percent of the required internal cross–sectional area of the flexible ventilation duct.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code; and 33 CFR 183.630.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6576. Liquefied Petroleum Gas.

Pursuant to section 652, Harbors and Navigation Code, a vessel carrying passengers for hire on the waters of this State using liquefied petroleum gas or compressed natural gas for heating, cooking, or lighting must adhere to the federal regulations as contained in 46 CFR 25, 58, 147, and 184.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

Article 4.1. Capacity Plate

§ 6580. Capacity Plate.

HISTORY

1. Amendment of Article 4.1 (§§ 6580 and 6581) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Register 66, No. 43.
2. Repealer filed 3–14–73; effective thirtieth day thereafter (Register 73, No. 11).

§ 6581. Exemptions.

HISTORY

1. Repealer filed 3–14–73; effective thirtieth day thereafter (Register 73, No. 11).

Article 4.5. Law Enforcement Vessels

§ 6590. Law Enforcement Vessels.

Vessels used as law enforcement vessels under the authority of Section 663.5, Harbors and Navigation Code, shall be identified as follows:

(a) They shall be of a distinctive color compatible with use as harbor police vessels.

(b) They shall be marked with words such as "Harbor Police," "Port Police," "Harbor Patrol," or "Port Patrol" or their equivalent. These identifying words shall be placed on each side of the vessel in a manner which will provide clear legibility and maximum opportunity for identification. The letters shall be of block character, of good proportion, and not less than six (6) inches in height. They shall be of a color which will form a good contrast with the color of the background and so maintained as to be clearly visible and legible. In addition to this marking, the vessel shall display prominently the identification of the operating agency.

NOTE: Authority cited: Section 663.5, Harbors and Navigation Code. Reference: Sections 650 and 663.5, Harbors and Navigation Code.

HISTORY

1. Repealer of Article 4.5 (Sections 6590 and 6591) and New Art. 4.5 (Sections 6590 and 6591) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Registers 65, No. 20 and 67, No. 48.
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment filed 11–25–87; operative 12–25–87 (Register 87, No. 49).

§ 6591. Blue Light for Enforcement Vessels.

The distinctive light prescribed by Section 652.5, Harbors and Navigation Code, for law enforcement vessels shall be a blue colored, revolving horizontal beam, low intensity light rotating or appearing to rotate because of a pulsating effect gained by means of a rotating reflector which causes a flashing or periodic peak intensity effect. The light shall be located at any effective point on the forward exterior of the vessel. A shield or other device, fixed or movable, to restrict the arc of visibility may be used if desired.

NOTE: Authority cited: Section 652.5, Harbors and Navigation Code. Reference: Sections 650 and 652.5, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 6592. Sound Level Measuring Instruments.

Pursuant to the authority provided in Section 654.05(d) of the Harbors and Navigation Code, a precision sound level meter which meets the Type II requirements of ANSI S1.4–1983 (revision of S1.4–1971), titled "Specification For Sound Level Meters," published in 1983, may be substituted for the Type I referred to in the Society of Automotive Engineers Technical Report J34 for measuring pleasure motorboat sound levels, titled "Exterior Sound Level Measurement Procedure For Pleasure Motorboats—SAE J34," published in 1973.

NOTE: Authority cited: Sections 652 and 654.05(d), Harbors and Navigation Code. Reference: Sections 652, 654, 654.05 and 654.06, Harbors and Navigation Code.

HISTORY

1. New section filed 11–25–87; operative 12–25–87 (Register 87, No. 49). For history of former Section 6592, see Register 85, No. 26.

Article 4.5.1. Boating Safety and Enforcement Financial Aid Program

§ 6593. Short Title.

This article shall be known and may be cited as the Boating Safety and Enforcement Financial Aid Program Regulations under which the Department of Boating and Waterways may provide State financial aid to local agencies' qualified boating safety and enforcement programs pursuant to Section 663.7 of the Harbors and Navigation Code.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New article 4.5.1 (sections 6593–6593.11) and section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.1. Purpose.

The purpose of the Boating Safety and Enforcement Financial Aid Program is to augment a participating agency's revenues for boating safety and enforcement activities when an agency incurs boating safety and enforcement program costs that exceed actual vessel taxes received by the county for boating safety and enforcement activities. The program is not intended to fully fund a participating agency's boating safety and enforcement activities, and agency participation in the program is entirely voluntary.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.2. Definitions.

The following definitions shall be used in this article.

(a) "Administrative costs" are the costs incurred by a participating agency for indirect services necessary for the operation of a participating agency's boating safety and enforcement program.

(b) "Agency" means a county of the State, or a city, district or other public agency within a county, that participates, or applies to participate, in the Boating Safety and Enforcement Financial Aid Program.

(c) "Allowable costs or expenses" means the costs or expenditures made by a participating agency that are authorized by the department.

(d) "Baseline financial aid eligibility allocation" means a participating agency's financial eligibility allocation as described in Section 6593.7 of this article.

(e) "Boat patrol" means a boating safety and enforcement unit of qualified boating safety and enforcement officers (full–time or seasonal).

(f) "Boating safety and enforcement officer" means trained personnel authorized and retained by a participating agency to perform boating safety and enforcement activities.

(g) "Boating safety programs" and "boating safety and enforcement programs" are participating agency programs comprised of boating safety and enforcement activities.

(h) "Calendar year" means the period of twelve consecutive months that runs from January 1 through December 31 of the same year.

(i) "Department" means the California Department of Boating and Waterways, unless otherwise specified.

(j) "Equipment" means boating–specific equipment or other support equipment used to implement or conduct boating safety and enforcement activities.

(k) "Fiscal year" means the period of twelve consecutive months that runs from July 1 of one year through June 30 of the following year.

(*l*) "Fringe benefits percent" is the percentage used by the participating or applicant agency to estimate the costs of non–salary benefits for an employee, such as workers' compensation premiums, retirement contributions, uniform allowances, insurance, payments made under the Federal Insurance Contributions Act, and any other employee benefit approved by the department. The percent is expressed as a percentage of direct salary costs and is calculated by dividing the fringe benefits cost by the direct salary cost of an employee.

(m) "Mid–range or equivalent journeyman level average hourly pay" is the average hourly pay for a typical employee of an applicant agency. The mid–range is used if there are an odd number of pay steps or an equivalent is used if there is an even number of pay steps. An equivalent is calculated by averaging the two middle pay steps.

(n) "Quarter" means a period of three consecutive months during the fiscal year. The quarters of the State's fiscal year are comprised of four consecutive three–month segments, as noted below.

(1) Quarter 1 = July 1 through September 30

(2) Quarter 2 = October 1 through December 31

(3) Quarter 3 = January 1 through March 31, and

(4) Quarter 4 = April 1 through June 30.

(o) "Program reduction" means a reduction in a participating agency's annual allocation due to insufficient program expenditures as described in Section 6593.7 of this article.

(p) "Unallocated funds" are funds that have not been spent or used by participating agencies' boating safety and enforcement programs pursuant to section 6593.7(c) of this article.

(q) "Vessel taxes received by the county" are funds equal to 100 percent of the amount received by the county from the share of personal property taxes on vessels allocated to the County General Fund for boating safety and enforcement activities.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.3. Boating Safety and Enforcement Activities.

For the purposes of receiving State financial aid under Section 663.7 of the Harbors and Navigation Code, boating safety and enforcement activities include:

(a) Enforcement of State and local laws and regulations for boating activities by means of vessel, foot patrol, motor vehicle, or aircraft. Educating the public on State and local laws and regulations is included as enforcement.

(b) Inspection of vessels for compliance with required safety equipment, registration requirements, and sanitation and pollution control that satisfy the intent of State law.

(c) Supervision of organized on–the–water boating activities or water events that allows for the protection and safety of the boating public during such activities or events.

(d) Search and rescue operations originating from on–the–water boating activities, including the recovery of drowned bodies that are the result of boating activities.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.4. Eligibility.

Agencies requesting permission to participate are entitled to receive State financial aid for boating safety and enforcement programs on waters under their jurisdiction, provided the following conditions are satisfied:

(a) An applicant agency provides a certified copy of the resolution or minute order from the county board of supervisors with the application for financial aid under the provisions of Section 663.7 of the Harbors and Navigation Code.

(1) In the case of a local government agency within a county, a certified copy of the resolution or minute order shall accompany the application for financial aid from that local government entity, as well as a certified copy of the resolution or minute order from its county board of supervisors, authorizing the agency to participate in the program.

(2) The resolution or minute order shall:

(A) Authorize the chairperson, or designated representative, to sign the application and contract.

(B) Authorize the chairperson, or designated agency representative, to sign the department's form for each reimbursement claim.

(C) Authorize the county auditor to certify the amount of prior year vessel taxes received by the county.

(3) The department may deny the application if the applicant agency fails to provide the above–referenced information or data.

(b) An applicant agency submits a completed application that complies with the requirements of Section 6593.5.

(c) The county in which an applicant agency resides agrees to spend an amount equal to 100 percent of vessel taxes received by the county for boating safety and enforcement activities prior to the agency receiving State financial aid under this program.

(d) An applicant agency maintains an operational boat patrol while receiving State financial aid under this program.

(e) An applicant agency agrees to comply with the reimbursement process in Section 6593.9.

(f) An applicant agency agrees to comply with the reporting requirements in Section 663.7 of the Harbors and Navigation Code.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.5. Application.

(a) An agency applying for financial aid under the Boating Safety and Enforcement Financial Aid Program shall complete an annual application. The annual Boating Safety and Enforcement Financial Aid Program application for a county shall accompany all applications from other governmental agencies within the county requesting aid from the department.

(b) The application shall include, at a minimum, the following estimates for waterways under the jurisdiction of each applicant agency:

- Size of waterway(s) (in square miles for lakes and in miles for rivers or coastline)
- Usage of waterway(s) (types of boating activities)
- Types of patrols (on–water, foot, truck/vehicle, and/or air)
- Workload seasonality adjustments (unusual increases/decreases in staffing)
- Number of boats on the waterways.

(c) A participating agency shall submit a completed application to the department at least six months prior to the start of the fiscal year for which State financial aid is requested. A new applicant agency shall submit a completed application to the department at least 14 months prior to the start of the fiscal year for which State financial aid is requested.

(d) Subsequent to the expiration of the filing date, amendments to the applications shall be allowed only subject to the approval of the department.

NOTE: Authority cited: Section 663.7 (k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.6. Annual Contract.

(a) Beginning in fiscal year 2003–04, every participating agency shall enter into an annual contract with the department prior to the start of the fiscal year. The contract shall indicate, at a minimum, the financial aid eligibility allocation amount for the ensuing fiscal year and whether a participating agency is to submit reimbursement claims on a monthly or quarterly basis.

(b) The department shall send every participating agency a contract at least 90 days prior to the start of the fiscal year. A participating agency shall sign and return the contract to the department at least 15 days prior to the start of the fiscal year. Failure of a participating agency to sign and return the contract 15 days prior to the start of the fiscal year may result in a participating agency losing its financial aid eligibility allocation for that fiscal year.

NOTE: Authority cited: Section 663.7 (k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.7. Financial Eligibility Formula.

The following formula shall be used for determining annual maximum eligibility allocation amounts for a participating agency eligible for State financial aid under the Boating Safety and Enforcement Financial Aid Program. The State boating safety and enforcement program financial eligibility allocation shall include total State boating safety and enforcement program financial aid for all public entities within a county.

(a) A county that received an allocation in fiscal year 1996–97 shall receive, at a minimum, the amount of the fiscal year 1996–97 allocation, unless the county's program has been reduced by the county or the State. This fiscal year 1996–97 amount is defined as the baseline State financial eligibility allocation. (See Exhibit 1 in Section 6593.11 — *Baseline State Financial Eligibility Allocations*)

(b) A county that received an allocation subsequent to fiscal year 1996–97 but prior to fiscal year 2003–04 shall receive, at a minimum, the amount of the most recent fiscal year allocation, unless the county's program has been reduced. This amount is also defined as the baseline State financial eligibility allocation and is likewise shown in Exhibit 1 in Section 6593.11.

(c) Beginning with fiscal year 2005–06 and continuing with each fiscal year thereafter:

(1) A participating agency that spends less than its baseline State financial eligibility allocation in both calendar year 2003 and calendar year 2004 shall have its eligibility allocation reduced in fiscal year 2005–06. The reduced eligibility allocation amount shall equal the higher amount spent in either calendar year 2003 or calendar year 2004. (See Exhibit 2 in Section 6593.11 — *Example of Program Reduction*)

(2) A participating agency that spends less than its baseline State financial eligibility allocation during a calendar year period, in the two most recent calendar years, shall have its eligibility allocation reduced in the next fiscal year. The revised eligibility allocation amount shall equal the higher amount spent during one of the two most recent calendar years.

(3) Unallocated funds as a result of (1) or (2) shall be reallocated on an annual one–time basis to those participating agencies that incurred expenditures exceeding their baseline eligibility allocations during the most recent calendar year. These unallocated funds shall be allocated on a prorated basis to participating agencies based on the individual participating agency's expenditures that exceeded baseline eligibility allocations divided by the total statewide expenditures that exceeded baseline eligibility allocations applied to the total statewide unallocated funds. Under no circumstances shall a participating agency receive more than 20 percent of the total funds appropriated to all participating agencies for boating safety and enforcement programs. The total amount of funds that are reallocated shall not exceed the amount of the total statewide surplus. The reallocated funds shall be treated as a one–time reallocation of unspent funds. (See Exhibit 3 in Section 6593.11 — *Example of Reallocation of Unspent Funds*)

(d) Beginning with fiscal year 2003–04 and continuing with each fiscal year thereafter, the formula for a new, non–participating applicant agency applying to the program shall be as follows, provided that sufficient funds are appropriated specifically for new agencies:

Total Estimated Boating Safety and Enforcement Costs
Less Vessel Taxes Received by the county
Equals State Financial Eligibility Allocation

(1) Total Estimated Boating Safety and Enforcement Costs shall be based on the estimated work–hours of patrol required for boating safety and enforcement activities. Each agency shall justify the estimated number of work hours of patrol by documenting various operations data as part of the application.

(2) The number of work hours shall be multiplied by either the agency's actual hourly pay of boating safety and enforcement officers, or the agency's mid–range or equivalent (i.e., third of five pay steps) journeyman level average hourly pay, and either the agency's actual fringe benefit percent for boating safety and enforcement officers, or the agency's customary average fringe benefits percent, to estimate total personnel costs. This total personnel costs amount shall be multiplied by 30 percent to estimate associated operations, maintenance, and equipment costs. The sum of total personnel costs, and associated operations, maintenance, and equipment costs, shall equal estimated boating safety and enforcement direct costs, which may be increased by up to 5 (five) percent for allowable administrative costs to determine the total estimated boating safety and enforcement costs. These total estimated costs shall be offset by the actual prior year vessel taxes received by the county to determine the net amount of State financial eligibility allocation. (See Exhibit 4 in Section 6593.11 — *Example of New Program Calculation*)

(3) Each agency applying for financial aid under this section shall submit documentation supporting its calculations as requested by the department. The first–year eligibility allocation for any new agency applying to the program shall be considered that agency's baseline State financial eligibility allocation.

(e) Beginning with fiscal year 2004–05 and continuing with each fiscal year thereafter, a participating agency that demonstrates that its expenditures exceed its baseline State financial eligibility allocations may be eli-

gible for any additional funds appropriated for expansion of existing participating agencies' boating safety and enforcement programs. Any additional funds allocated to a participating agency under this subsection shall be treated as a program increase to the participating agency's baseline State financial eligibility allocation.

(f) Beginning with fiscal year 2004–05 and continuing with each fiscal year thereafter, if funds budgeted for the boating safety and enforcement program are less than the sum of the prior year's individual participating agency allocations, each individual participating agency may have its eligibility allocation reduced in proportion to the overall program shortfall. (See Exhibit 5 in Section 6593.11 — *Example of Fund Shortfall Calculation*)

NOTE: Authority cited: Section 663.7 (c), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.8. Allowable and Non–Allowable Costs.

Beginning in fiscal year 2003–04, all program expenditures under this program shall be spent on personnel and operations, maintenance, and equipment that are used by a participating agency's boat patrol when conducting boating safety and enforcement activities, and administrative costs attributable to a participating agency's boating safety and enforcement program. All program expenditures, including those made with vessel taxes received by the county, shall comply with the requirements of this section.

(a) The following are allowable costs under the program:

(1) Personnel costs of boating safety and enforcement officers, including, but not limited to, salaries, wages, overtime and holiday pay, differential pay, on–call pay, workers' compensation premiums, retirement contributions, uniform allowances, insurance, payments made under the Federal Insurance Contributions Act, and any other employee benefit approved by the department.

(2) Operations, maintenance, and equipment costs, including, but not limited to, fuel; vessel, vessel trailer and equipment repair; storage of vessels, vessel trailers and equipment; vehicle mileage for vehicles used to tow vessels; hull insurance for vessels; communications equipment for items to be attached or mounted to a vessel or vehicle; per diem and other costs associated with non–POST (California Commission on Peace Officer Standards and Training) boating safety and enforcement training; per diem costs associated with overnight boating safety and enforcement assignments that occur at least 50 miles from the main headquarters; dive gear; utilities (including gas, electricity, water, land–based telephone service, and propane charges), office rental and leases, and office equipment for a boat patrol office located in a geographically separate location than the main headquarters; prorated share of vehicle and aircraft leases; and miscellaneous boating equipment.

(3) Administrative costs attributable to a participating agency's boating safety and enforcement program provided such administrative costs are not more than five percent of the total allowable direct program costs.

(4) A participating agency shall provide written justification and obtain prior written approval from the department in order to be reimbursed for the following costs:

(A) Purchase of communications equipment or the rental or leasing of office space.

(B) Any non–POST training course that an employee of a participating agency plans to attend.

(C) Prorated share of leased vehicles and aircraft.

(D) Out–of–state travel.

(b) The following are not allowable costs under the program:

(1) Any cost, either in its entirety or a prorated share, not associated with a participating agency's boating safety and enforcement program.

(2) The purchase of any type of vessel, vessel trailer, vehicle, or aircraft with State funds. Note: the department administers a financial assistance program for purchase of vessels outside of the boating safety and enforcement program. A participating agency may use vessel taxes received by the county for the purchase, or a prorated share of the purchase, of any type of vessel, vessel trailer, vehicle, or aircraft provided such equipment is dedicated solely, or on a prorated basis, for boating safety and enforcement activities.

(3) The general costs necessary in employing, outfitting with weapons, and training personnel in accordance with prescribed statutes affecting peace officers, including, but not limited to, drug screening tests, background checks, psychological testing, fingerprinting fees, law enforcement training unrelated to boating safety and enforcement activities, and training in weaponry.

(4) One–time payments for vacation, sick leave, or compensation time off in lieu of overtime due to separation or medical causes.

(5) Any administrative or overhead costs that exceed five percent of the total allowable direct program costs of a participating agency's boating safety and enforcement program.

NOTE: Authority cited: Section 663.7 (k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.9. Reimbursement Procedures.

Beginning in fiscal year 2003–04, the following procedures shall be used to reimburse a participating agency for allowable expenditures under the Boating Safety and Enforcement Financial Aid Program. A participating agency may only receive State reimbursement under this program when actual allowable expenditures on boating safety and enforcement activities exceed actual prior year vessel taxes received by the county.

(a) The department shall provide financial aid, under Section 663.7 of the Harbors and Navigation Code, in the form of reimbursements to cover the costs incurred by a participating agency for boating safety and enforcement activities that exceed vessel taxes received by the county, up to the participating agency's State financial eligibility allocation amount. Reimbursements shall equal the actual amount of allowable costs incurred by a participating agency over and above the actual prior year vessel taxes received by the county, up to the State financial eligibility allocation amount.

(b) A participating agency shall submit claims to the department for the purpose of reimbursement under this program. Claims may be submitted by a participating agency on a monthly or quarterly basis as specified in the annual contract. A participating agency shall submit claims indicating actual costs incurred during the month or quarter and total year–to–date actual costs. Claims shall be submitted irrespective of whether State financial aid is reimbursed to the participating agency during the month or quarter.

(c) Personnel costs shall be reimbursed based on the actual number of hours spent on boating safety and enforcement activities, including associated sick leave, vacation, and compensatory time off, during the month or quarter by each boating safety and enforcement officer of the participating agency. Actual hours, and associated sick leave, vacation, and compensatory time off, for each boating safety and enforcement officer shall be multiplied by the boating safety and enforcement officer's hourly pay to determine direct salary costs. Direct salary costs are multiplied by the participating agency's customary average fringe benefits percent to determine total personnel costs.

(d) Associated operations, maintenance, and equipment costs shall be reimbursed based on actual costs.

(e) Administrative costs attributable to a participating agency's boating safety and enforcement program may either be directly identified or indirectly allocated to the program.

(1) Administrative personnel costs directly identified to a participating agency's boating safety and enforcement program shall be reimbursed based on the actual number of hours spent on administrative activities related to boating safety and enforcement activities during the month or quarter. Actual hours for each administrative staff shall be multiplied by the staff's hourly pay to determine administrative salary costs. Adminis-

trative salary costs are multiplied by the participating agency's customary average fringe benefits percent to determine administrative personnel costs.

(2) Administrative costs that are not readily assignable to a participating agency's boating safety and enforcement program, but are necessary for the operation of the participating agency, shall be identified through the use of an Indirect Cost Rate Proposal (ICRP), a formal allocation method. It is recommended but not required that participating agencies using this indirect method obtain the following federal publication: Office of Management and Budget (OMB) Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments." This publication explains how indirect costs may be handled. This publication is available from the department.

(f) Year–to–date allowable costs shall be offset by annual actual prior year vessel taxes received by the county and year–to–date State financial aid reimbursements to determine the amount of State financial aid on a claim. If actual prior year vessel taxes received by the county have not been expended on boating safety and enforcement activities, a participating agency shall not receive State financial aid during that month or quarter.

(g) The department shall conduct a review of each claim for accuracy, completeness, and applicability to the program. The department may request additional supporting information from a participating agency for justification of expenditures prior to approving a participating agency's claim. Claims that result in reimbursement to a participating agency shall be forwarded to the State Controller's Office for payment once the department has completed the review and approved the claim for payment.

(h) Any expenditure omitted by a participating agency from a claim for State financial aid may be submitted by a participating agency for reimbursement with any succeeding claim within 60 days following the last day of the fiscal year.

(1) The issue date of a purchase order, invoice date, or day in which the hours were worked determines the fiscal year in which expenditures occur for the purposes of submitting claims. Date of payment, date received, shipping date, and date of invoice received are not factors in determining the fiscal year in which expenditure is made.

(2) If the cost of utilities overlaps fiscal years, the total cost may be claimed in either fiscal year.

(i) Claims for reimbursement for State financial aid shall be submitted within 60 days following the last day of the monthly or quarterly reporting period. The department may reduce a participating agency's total State financial aid allocation by five percent if the participating agency exceeds the sixty–day billing period and an additional five percent for every thirty–day period thereafter that the participating agency is late in filing a claim for State financial aid.

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.10. Audits and Appeals.

(a) The department shall maintain adequate controls to ensure responsibility and accountability for the expenditure of State funds. The department may conduct periodic systematic audits of a participating agency in order to determine whether an agency is in compliance with State law and the claims submitted by a participating agency accurately represent the amount due the agency under the Boating Safety and Enforcement Financial Aid Program.

(b) The department shall notify a participating agency in writing at least one week in advance of all scheduled audits.

(c) A participating agency shall make records available for review to the department or its representatives. A participating agency shall maintain records deemed necessary by the department for a minimum of five years and shall include, at a minimum, supporting documentation for any claims for reimbursement by the participating agency. Such records shall include actual hours spent on the program (including the name and classification of each employee and the specific boating safety and enforcement activity for which the hours relate), documents supporting the actual salaries used to determine personnel costs, documents supporting the participating agency's customary fringe benefits percentage, receipts for associated operations, maintenance, and equipment costs, equipment maintenance and repair reports, current equipment inventory report, documentation supporting actual vessel taxes received by the county, and other applicable documentation as requested by the Department.

(d) The audit shall include an evaluation of the accounting and control systems of the participating agency.

(e) If the department conducts an audit of a participating agency, the department shall issue an audit report to the participating agency. The audit report shall include a description of how the audit was performed and a summary of audit exceptions and management improvement recommendations. If applicable, a correction plan shall be discussed with the participating agency describing the specific actions that are recommended to be taken, or that have been taken, to correct the deficiencies identified by the department. Future State financial aid payments may be withheld from the participating agency until the deficiencies have been corrected.

(f) When an audit indicates that a participating agency has claimed and received payments from the department under this program to which it is not entitled, the participating agency shall pay, in addition to that portion of the claim that was improperly claimed, interest on the amount of overpayment from the date in which the amount was improperly claimed to the next claim. The overpayment, plus interest, may be repaid through a reduction to the next claim for State financial aid. The interest rate shall equal the monthly average rate received on investments in the State Surplus Money Investment Fund.

(g) When it is established that a participating agency fraudulently claimed and received payments under this program, the participating agency shall pay, in addition to that portion of the claim that was improperly claimed, a penalty of 300 percent of the amount improperly claimed. Payments due from a participating agency may be recovered through an offset to the next claim(s) for State financial aid.

(h) A participating agency has the right to appeal the findings of any audit to the director of the department in writing within 90 days after completion of the audit report. The participating agency shall include in the written appeal a description of the items in question and the participating agency's reason for the appeal. The appeal process shall commence with a conference between a representative of the department and the participating agency to review the items in question. If the appeal is not resolved to the participating agency's satisfaction, the participating agency may request that the matter be reviewed through a formal hearing conducted in accordance with Government Code Section 11500 et seq.

NOTE: Authority cited: Section 663.7 (k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

§ 6593.11. Exhibits.

This section contains the Exhibits referenced in Section 6593.7.

Exhibit 1 — Baseline State Financial Eligibility Allocations

County	*FY 1996–97 State Financial Eligibility Allocation*	*Subsequent Program Reductions*	*Allocation Subsequent to FY 1996–97 but Prior to FY 2003–04*	*Baseline State Financial Eligibility Allocation*
1. Amador County	$95,781			$95,781
2. Butte County			$148,069	148,069
3. Calaveras County	159,868			159,868
4. Colusa County	96,091			96,091
5. Contra Costa County	379,713			379,713
6. Del Norte County	130,775			130,775
7. El Dorado County	309,479			309,479
8. Fresno County	356,210			356,210
9. Glenn County	108,111			108,111
10. Humboldt County	110,313			110,313
11. Imperial County	223,536			223,536
12. Kings County			67,428	67,428
13. Lake County	271,380			271,380
14. Lassen County	91,912			91,912
15. Los Angeles County	1,500,000			1,500,000
16. Mariposa County	213,873			213,873
17. Mono County	101,444			101,444
18. Napa County	246,087			246,087
19. Nevada County	83,243			83,243
20. Placer County	52,916			52,916
21. Plumas County	118,687			118,687
22. Sacramento County			370,000	370,000
23. San Bernardino County			190,000	190,000
24. San Joaquin County	376,279			376,279
25. Shasta County	523,567			523,567
26. Sierra County	57,088			57,088
27. Siskiou County	71,489			71,489
28. Solano County	232,444			232,444
29. Sonoma County	263,226			263,226
30. Sutter County	167,584			167,584
31. Tehama County	120,000			120,000
32. Trinity County	106,714			106,714
33. Tulare County	174,132			174,132
34. Tuolumne County	215,880			215,880
35. Yolo County	225,776			225,776
36. Yuba County	140,905			140,905
Total	$7,324,503	$0	$775,497	$8,100,000

Exhibit 2 — Example of Program Reduction

	Agency A	*Agency B*
Baseline State Financial Eligibility Allocation (SFEA) – FY 2004–05	$100,000	$100,000
Calendar Year 2003 Expenditures	90,000	95,000
Calendar Year 2004 Expenditures	95,000	90,000
FY 2005–06 SFEA	95,000	95,000

Exhibit 3 — Example of Reallocation of Unspent Funds

	Agency C	*Rest of Agencies*	*Total*
Baseline State Financial Eligibility Allocation (SFEA) – FY 2004–05	$100,000	$8,000,000	$8,100,000
Calendar Year 2004 Deficit	–10,000	–390,000	–400,000
Percent of Statewide Deficit	2.5%	97.5%	100%
Unallocated Funds		100,000	100,000
Reallocation of Funds	2,500	97,500	100,000
FY 2005–06 SFEA	$102,500	$7,997,500	$8,100,000
Calendar Year 2005 Deficit	–10,000	–90,000	–100,000
Percent of Statewide Deficit	10.0%	90.0%	100%
Unallocated Funds		10,000	10,000
Reallocation of Funds	1,000	9,000	10,000
FY 2006–07 SFEA	$101,000	$7,999,000	$8,100,000

Exhibit 4 — Example of New Program Calculation

	Total Estimated Boating Safety and Enforcement Costs	
Provided by Agency	1. Estimated Work Hours	1,300
Provided by Agency	2. Hourly Pay	$25.00
Provided by Agency	3. Fringe Benefits Percent	33%
Product of Lines 1–3	4. Total Personnel Costs	$43,225
Determined by DBW	5. Associated Operations, Maintenance & Equipment Ratio	30%
Line 4 times Line 5	6. Associated Operations, Maintenance & Equipment Costs	$12,968
Line 4 plus Line 6	7. Estimated Boating Safety and Enforcement Direct Costs	$56,193
Line 7 times 5%	8. Maximum Allowable Administrative Costs	$2,810
Line 7 plus Line 8	9. Total Estimated Boating Safety and Enforcement Costs	$59,003
Provided by Agency	Less Vessel Taxes Received by the county	(9,003)
	FY 2003–04 Baseline State Financial Eligibility Allocation	$50,000

Exhibit 5 — Example of Fund Shortfall Calculation

Participating Agency	*Baseline State Financial Eligibility Allocation (SFEA)*	*Percent of Baseline SFEA*	*State Financial Eligibility Allocation Reduction*	*FY 2004–05 State Financial Eligibility Allocation*
1. Amador County	$95,781	1.2%	$7,200	$88,581
2. Butte County	148,069	1.8%	10,800	137,269
3. Calaveras County	159,868	2.0%	12,000	147,868
4. Colusa County	96,091	1.2%	7,200	88,891
5. Contra Costa County	379,713	4.7%	28,200	351,513
6. Del Norte County	130,775	1.6%	9,600	121,175
7. El Dorado County	261,766	3.2%	19,200	242,566
8. Fresno County	356,210	4.4%	26,400	329,810
9. Glenn County	108,111	1.3%	7,800	100,311
10. Humboldt County	110,313	1.4%	8,400	101,913
11. Imperial County	223,536	2.8%	16,800	206,736
12. Kings County	67,428	0.8%	4,800	62,628
13. Lake County	271,380	3.4%	20,400	250,980
14. Lassen County	91,912	1.1%	6,600	85,312
15. Los Angeles County	1,500,000	18.5%	111,000	1,389,000
16. Mariposa County	213,873	2.6%	15,600	198,273
17. Mono County	101,444	1.3%	7,800	93,644
18. Napa County	246,087	3.0%	18,000	228,087
19. Nevada County	83,243	1.0%	6,000	77,243
20. Placer County	52,916	0.7%	4,200	48,716
21. Plumas County	118,687	1.5%	9,000	109,687
22. Sacramento County	370,000	4.6%	27,600	342,400
23. San Bernardino County	190,000	2.3%	13,800	176,200
24. San Joaquin County	376,279	4.6%	27,600	348,679
25. Shasta County	523,567	6.5%	39,000	484,567
26. Sierra County	57,088	0.7%	4,200	52,888
27. Siskiou County	71,489	0.9%	5,400	66,089
28. Solano County	193,103	2.4%	14,400	178,703
29. Sonoma County	263,226	3.2%	19,200	244,026
30. So. Lake Tahoe City	47,713	0.6%	3,600	44,113
31. Suisun City	39,341	0.5%	3,000	36,341
32. Sutter County	167,584	2.1%	12,600	154,984
33. Tehama County	120,000	1.5%	9,000	111,000
34. Trinity County	106,714	1.3%	7,800	98,914
35. Tulare County	174,132	2.1%	12,600	161,532
36. Tuolumne County	215,880	2.7%	16,200	199,680
37. Yolo County	225,776	2.8%	16,800	208,976
38. Yuba County	140,905	1.7%	10,200	130,705
Total	$8,100,000	100.0%	$600,000	$7,500,000
Amount in Fund for FY 2004–05	$7,500,000			
FY 2004–05 Shortfall	$600,000			

NOTE: Authority cited: Section 663.7(k), Harbors and Navigation Code. Reference: Sections 650 and 663.7, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–2003; operative 1–28–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 5).

Article 4.6. Multi–Jurisdictional Vessel Restrictions

§ 6595. Prohibition of Watercraft Powered by Certain Spark–Ignition Two–Stroke Engines.

Commencing October 4, 2001, the operation of all two–stroke–engine–powered watercraft on Lake Tahoe, Cascade Lake, Fallen Leaf

Lake and Echo Lake, is prohibited, except watercraft powered by a two-stroke-powered engine whose engine is certified and labeled as meeting either of the following pollution air emissions standards:

(a) the 2006 or later model year United States Environmental Protection emissions standards, as specified in Title 40, Code of Federal Regulations, Part 91, or

(b) the 2001 or later California Air Resources Board emissions standard, as specified in Title 13, California Code of Regulations, Chapter 9, Sections 2440 et seq.

NOTE: Authority cited: Section 660(b), Harbors and Navigation Code. Reference: Section 660(b), Harbors and Navigation Code.

HISTORY

1. New article 4.6 (section 6595) and section filed 10-4-2001; operative 10-4-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 40).

Article 5. Pilot Rules and Rules of the Road

§ 6600. Purpose.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Repealer of Sections 6600 through 6602, 6604 through 6623, 6625 through 6679, 6683 through 6696, and new Sections 6600 through 6602, 6604 through 6623, 6625 through 6679, 6683 through 6691, 6694 through 6696, and amendment of Section 6680 filed 5-11-71; effective thirtieth day thereafter (Register 71, No. 20). For prior history, see Registers 60, No. 13; 65, No. 13; 67, Nos. 30 and 48; 68, Nos. 24 and 48; 69, No. 50.
2. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
3. Amendment filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).
4. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 6600.1. Incorporation by Reference.

(a) The following rules of the road and pilot rules promulgated by the United States Coast Guard are incorporated by reference. Copies may be obtained from sources indicated. They are also available for inspection at the Department of Boating and Waterways, and Archives, Secretary of State, 1020 "O" Street, Sacramento, California 95814.

(1) SUBCHAPTER D—International Navigation Rules, Title 33, Code of Federal Regulations, Part 81-72 COLREGS: IMPLEMENTING RULES and Appendix A—Proclamation of January 19, 1977, and 72 COLREGS.

(2) SUBCHAPTER E—Inland Navigation Rules, Title 33 Code of Federal Regulations, Part 84, Part 85, Part 86, Part 87, Part 88, and Part 89.

(3) Public Law 96-591, December 24, 1980, known as the INLAND NAVIGATION RULES ACT OF 1980, Section 33, United States Code 2001.

(4) Subsequent modifications, amendments, and/or changes, to federal regulations pertaining to rules of the road and pilot rules shall be effective in this section upon adoption.

NOTE: These regulations and statutes are published by the U.S. Coast Guard in NAVIGATION RULES INTERNATIONAL—INLAND (COMMANDANT INSTRUCTION M16672.2. (Series.)) The public may purchase copies of this pamphlet from the Government Printing Office Bookstore, ARCO Plaza Level C, 505 South Flower, Los Angeles, CA 90071. Telephone (213) 239-9844 for cost and availability of this pamphlet.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).
2. Change without regulatory effect amending subsections (a) and (a)(4) filed 4-30-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 18).

§ 6601. Invalidity of Provision or of Application to Particular Person or Circumstance.

If any provision of this article, or its application to any person or circumstances, is held invalid the remainder of this article, and the application of its provisions to any other person or circumstance, is not affected.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10-11-85 (Register 85, No. 41).

§ 6602. Definitions.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6604. Maneuvering and Warning Signals.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6605. Sound Signal—One Short Blast.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6606. Sound Signal—Two Short Blasts.

HISTORY

1. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6607. Sound Signal—Three Short Blasts.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6608. Cross Signals—Forbidden.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Section 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6609. Sound Signals in Restricted Visibility.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6610. Sound Signal—Reduced Visibility—Power Driven Vessel Underway.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6611. Sound Signal—Reduced Visibility—Power Driven Vessel Towing.

HISTORY

1. Amendment filed 1-18-77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6612. Sound Signal—Reduced Visibility—Vessel Towed.

HISTORY

1. Repealer filed 1-28-83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6613. Sound Signal—Reduced Visibility—Sail Vessel Underway.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6614. Application.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6615. Safe Speed.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Repealer filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6616. Reduced Visibility—Fog Signal Forward of Beam.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6617. Sound Signals—Reduced Visibility—Vessel at Anchor.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6618. Risk of Collision.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6618.1. Action to Avoid Collision.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

[The next page is 485.]

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6619. Responsibilities Between Vessels.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6619.1. Vessel Traffic Services.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6619.2. Conduct of Vessels in Sight of One Another.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6620. Sailing Vessels.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6621. Steering and Sailing Rules—Meeting of Power Driven Vessels and Sailing Vessels.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6622. Steering and Sailing Rules—Danger Signal.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6623. Steering and Sailing Rules—Signals Only When in Sight.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6624. Narrow Channels.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 7–28–67; effective thirtieth day thereafter (Register 67, No. 30).
2. Amendment filed 12–11–69; effective thirtieth day thereafter (Register 69, No. 50).
3. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
4. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
5. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6625. Action by Give–Way Vessel.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6626. Steering and Sailing Rules—Vessels Passing Each Other.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6627. Head–On Situation.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6628. Overtaking.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6629. Crossing Situation.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6629.1. Action by Stand–On Vessel.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6630. Steering and Sailing Rules—Vessels Nearing Bend or Curve in Channel; Moving from Docks.

HISTORY
1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 2).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6630.1. Conduct of Vessels in Restricted Visibility.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6631. Responsibility.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY
1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6632. Steering and Sailing Rules—Passing Floating Plant Working in Navigable Channels—Passing Signals.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6633. Copy of Rules.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6634. Day Signals and Day Marks—Vessels over 65 Feet in Length Moored or at Anchor.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6635. Day Signals and Day Marks—Signals to Be Displayed by a Towing Vessel When Towing a Submerged or Partly Submerged Object upon a Hawser When No Signals Can Be Displayed upon the Object Which Is Towed.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6636. Day Signals and Day Marks—Power Driven Vessels, Derrick Boats, Lighters, or Other Types of Vessels Made Fast Alongside a Wreck, or Moored over a Wreck Which Is on the Bottom or Partly Submerged, or Which May Be Drifting.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6637. Day Signals and Day Marks—Dredges Held in Stationary Position by Moorings or Spuds.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Editorial correction deleting repealed text pursuant to 1–28–83 order filed 4–12–84 (Register 84, No. 15).

§ 6638. Day Signals and Day Marks—Self-Propelling Suction Dredges Underway and Engaged in Dredging Operations.

HISTORY

1. Repealer filed 1–23–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6639. Day Signals and Day Marks—Vessels Moored or Anchored and Engaged in Laying Cables or Pipe, Submarine Construction, Excavation, Matsinking, Bank Grading, Dike Construction, Revetment, or Other Bank Protection Operations.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6640. Day Signals and Day Marks—Day Marks for Fishing Vessels with Gear Out.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6641. Passing U.S. Coast Guard Vessel Handling or Servicing Aid to Navigation.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6642. Passing Floating Plant—Speed of Vessels Passing Floating Plant Working in Channels.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6643. Passing Floating Plant—Light-Draft Vessels Passing Floating Plant.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6644. Passing Floating Plant—Aids to Navigation Marking Floating-Plant Moorings.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6645. Passing Floating Plant—Obstruction of Channel by Floating Plant.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6646. Passing Floating Plant—Clearing of Channels.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6647. Passing Floating Plant—Protection of Marks Placed for the Guidance of Floating Plant.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6648. Lights and Shapes—Application.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. New subsection (f) filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).
4. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6648.1. Running Lights—Vessels—When Operating on "Inland Waters."

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6648.2. Running Lights—Vessels—When Operating on "Inland Waters"—Visibility of Lights.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6648.3. Positioning and Technical Details of Lights and Shapes.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6648.4. Additional Signals for Fishing Vessels Fishing in Close Proximity.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649. Running Lights—Vessels—When Operating on "Inland Waters"—Power-Driven Vessels Underway.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment of subsections (b) and (c) filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
3. Repealer and new section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
4. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.1. Running Lights—Vessels—When Operating on "Inland Waters"—Towing and Pushing.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.2. Running Lights—Vessels—When Operating on "Inland Waters"—Sailing Vessels Underway and Vessels Under Oars.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.3. Running Lights—Vessels—When Operating on "Inland Waters"—Fishing Vessels.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.4. Running Lights—Vessels—When Operating on "Inland Waters"—Vessels Not Under Command or Restricted in Their Ability to Maneuver.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.5. Running Lights—Vessels—When Operating on "Inland Waters."

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.6. Running Lights—Vessels—When Operating on "Inland Waters"—Anchored Vessels and Vessels Aground.

NOTE: Authority cited: Section 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.7. Running Lights—Seaplanes—When Operating on "Inland Waters."

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6649.8. Lights on Barges at Bank or Dock.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650, 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6650. Running Lights—Vessels—While Operating on the "High Seas."

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
3. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
4. Amendment filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).
5. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6650.1. Positioning and Technical Details of Lights Required for Use on Vessels Operating on the "High Seas."

NOTE: Authority cited: Sections 82, 652 and 655.3, Harbors and Navigation Code. Reference: Sections 650 and 652, Harbors and Navigation Code.

HISTORY

1. New section filed 8–26–77; effective thirtieth day thereafter (Register 77, No. 35).
2. Amendment filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6651. Towing Astern—Running Lights—Power Driven Vessels Less Than 26 Feet in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6652. Towing Astern—Running Lights—Power Driven Vessels 26 Feet or Over in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6653. Towing Alongside—Running Lights—Power Driven Vessels Less Than 26 Feet in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6654. Towing Alongside—Running Lights—Power Driven Vessels 26 Feet or Over in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6655. Pushing Ahead—Running Lights—Power Driven Vessels Less Than 26 Feet in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6656. Pushing Ahead—Running Lights—Power Driven Vessels 26 Feet and Over in Length.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6657. Lights to Be Displayed by a Towing Vessel When Towing a Submerged or Partly Submerged Object upon a Hawser When No Signals Can Be Displayed upon the Object Which Is Towed—Power Driven Vessels.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6658. Sailing Vessel—Running Lights—Starboard Side.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6659. Sailing Vessel—Running Lights—Port Side.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6660. Sailing Vessel—Running Lights—Side Light Screen.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6661. Sailing Vessel—Running Lights—Stern.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6662. Small Vessel—Running Lights—Less Than 10 Gross Tons.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6663. Sailing Vessel—Running Lights—Motorboat Propelled by Sail Alone.

HISTORY

1. Repealer filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).

§ 6664. Vessels Towed—Lights.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6665. Trawling, Dredging or Fishing—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6666. Rowing Boats—Running Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6667. Ferryboats—Running Lights.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6668. Lights for Barges, Canal Boats, Scows, and Other Nondescript Vessels.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment of subsections (f) and (g) filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
3. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6669. Barges, Canal Boats, Scows, and Other Nondescript Vessels Temporarily Operating on Waters Requiring Different Lights.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6670. Visibility Requirement of Lights on Floating Plants.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6671. Power Driven Vessels, Derrick Boats, Lighters, or Other Types of Vessels Made Fast Alongside a Wreck, or Moored over a Wreck Which Is on the Bottom or Partly Submerged, or Which May Be Drifting—Lights.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6672. Dredges Held in Stationary Position by Moorings or Spuds—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6673. Self-Propelling Suction Dredges Underway and Engaged in Dredging Operations—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6674. Vessels Moored or Anchored and Engaged in Laying Cable or Pipe, Submarine Construction, Excavation, Matsinking, Bank Grading, Dike Construction, Revetment, or Other Bank Protection Operations—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6675. Lights on Dredge Pipelines.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6675.1. Pipelines Disengaged from Dredges—Lights.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).

2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6676. Floating Plant—Lights.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6677. Rafts and Other Craft—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6678. Vessels Other Than Raft or Rowboat—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6679. Raft—Lights.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6680. Lights of Vessel at Anchor.

NOTE: Authority cited: Section 38, Harbors and Navigation Code. Reference: Section 652, Harbors and Navigation Code.

HISTORY

1. Amendment filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history see Register 68, No. 48.
2. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
3. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6681. Anchor Lights—Vessel Under 150 Feet in Length.

HISTORY

1. Repealer filed 12–19–68; effective thirtieth day thereafter (Register 68, No. 48).

§ 6682. Vessel Not More Than 65 Feet in Length—Special Anchorage Area—Lights.

HISTORY

1. Repealer filed 12–19–68; effective thirtieth day thereafter (Register 68, No. 48).

§ 6683. Lights for an Overtaken Vessel.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6684. Special Signals to Attract Attention.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
3. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6685. White Lights for Power Driven Vessels Carried on Centerline.

HISTORY

1. Amendment filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
2. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6686. Towing of Barges—Tows of Seagoing Barges Within Waters of California.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6687. Towing of Barges—Hawser Length—General.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6688. Towing of Barges—Hawser Length—Exceptions.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6689. Towing of Barges—Bunching of Tows.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6690. Look–Out.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6691. Distress Signals—Recognized.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Amendment filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6692. Visual Distress Signals—Required.

(a) Applicability. Except for Section 6692.1 of Title 14 of the California Code of Regulations, these rules apply to boats on coastal waters of California as defined in (b) (2) of this section.

(b) Definitions.

(1) "Visual distress signal" means a device that is approved by the Commandant of the United States Coast Guard under Title 46, Code of Federal Regulations, Part 160, or certified by the manufacturer under Title 46, Code of Federal Regulations, Parts 160 and 161.

(2) "Coastal Waters" means the high seas of the State of California as defined in Section 6552(f) of Title 14 of the California Code of Regulations.

(3) "Passenger" means every person carried on board a vessel other than:

(A) The owner or his representative;

(B) The operator;

(C) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(D) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(c) Visual distress signals required.

(1) No person may use a boat 16 feet or more in length or any boat carrying six or less passengers for hire unless visual distress signals selected from the list in paragraph (i) of this section, or the alternatives in paragraph (j) of this section in the number required are on board. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use must be carried.

(2) Between sunset and sunrise, no person may use a boat less than 16 feet in length unless visual distress signals, suitable for night use, selected from the list in paragraph (i) of this section, or paragraph (j) of this section, in the number required are on board.

(d) Launchers. When a visual distress signal carried to meet the requirements of paragraph (c) of this section requires a launcher to activate, then a launcher approved under Title 46, Code of Federal Regulations, Part 160.28, must also be carried.

(e) Exceptions. The following persons need not comply with paragraph (c) of this section; however, each must carry on board visual distress signals suitable for night use, selected from the list in paragraph (i), or paragraph (j) of this section, in the number required, between sunset and sunrise:

(1) A person competing in any organized marine parade, regatta, race, or similar event;

(2) A person using a manually propelled boat; or

(3) A person using a sailboat of completely open construction not equipped with propulsion machinery, under 26 feet in length.

(f) Stowage. No person may use a boat unless the visual distress signals required by paragraph (c) of this section are readily accessible.

(g) Serviceability. No person may use a boat unless each signal required by paragraph (c) of this section is in serviceable condition, and the service life of the signal, if indicated by a date marked on the signal, has not expired.

(h) Marking. No person may use a boat unless each signal required by paragraph (c) of this section is legibly marked with the approval number or certification statement, as specified in Title 46, Code of Federal Regulations, Parts 160 and 161.

(i) Visual distress signals accepted. Any of the signals listed in the following table, when carried in the number required, can be used to meet the requirements of paragraph (c) of this section.

(1) An electric distress light meeting the standards of 46 CFR 161.013. One is required to meet the night only requirement.

(2) An orange flag meeting the standards of 46 CFR 160.072. One is required to meet the day only requirement.

(3) Pyrotechnics meeting the standards noted in the following table.

TABLE

Approved Number Under 46 CFR	*Pyrotechnic Signal Devices*	*Accepted for Use*	*Number Required to Be Carried*
160.021 . . .	Hand–Held Red Flare Distress Signal [3]	Day and night	3
160.022 . . .	Floating Orange Smoke Distress Signals	Days only	3
160.024 . . .	Pistol–Projected Parachute Red Flare Distress Signals.	Day and night [1]	3
160.036 . . .	Hand–Held Rocket–Propelled Parachute Red Flare Distress Signals	Day and night	3
160.037 . . .	Hand–Held Orange Smoke Distress Signals.	Day only	3
160.057 . . .	Floating Orange Smoke Distress Signals	Day only	3
160.066 . . .	Distress Signal for Boats, Red Aerial Pyrotechnic Flare	Day and night [2]	3

[1] These signals require use in combination with a suitable launching device approved under Title 46, Code of Federal Regulations, Part 160.028.

[2] These devices may be either self–contained or pistol launched, and either meteor or parachute assisted type. Some of these signals may require use in combination with a suitable launching device approved under Title 46, Code of Federal Regulations, Part 160.028.

[3] Must have manufacturers date of October 1, 1980 or later.

(j) Any combination of signal devices selected from the types noted in paragraphs (i)(1), (2), and (3) of this section, when carried in the number required, may be used to meet both day and night requirements. Examples—the combination of the two hand–held red flares (160.021) and one parachute red flare (160.024 or 160.036) meets both day and night requirements. Three hand–held orange smoke (160.037) with one electric distress light (161.013) meet both day and night requirements.

(k) Existing equipment.

(1) Launchers manufactured before 1 January, 1981, which do not have approval numbers, are acceptable for use with meteor or parachute signals listed in table in Section (i)(3) as long as they remain in serviceable condition.

NOTE: Authority cited: Section 652, Harbors and Navigation Code. Reference: Section 650, Harbors and Navigation Code.

HISTORY

1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Amendment of subsection (a)(2) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
3. Amendment filed 11–25–87; operative 12–25–87 (Register 87, No. 49).
4. New subsections (b)(3)–(b)(3)(D) filed 10–17–91; operative 11–18–91 (Register 92, No. 30).
5. Amendment of subsections (a), (b)(2), and (c)(1), repealer of subsection (*l*) and amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6692.1. Visual Distress Signals—Prohibited Use.

No person in a boat shall display a visual distress signal on waters of the State under any circumstance except a situation where asssistance is needed because of immediate or potential danger to persons on board.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Sections 650 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6694. Orders to Helmsman.

HISTORY

1. Repealer filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).

§ 6695. Searchlights or Other Blinding Lights.

(a) Except for law enforcement or search and rescue activities, flashing a searchlight or other blinding light onto the bridge or onto the pilothouse of any vessel underway is prohibited.

(b) All floodlights or headlights which may interfere with the proper navigation of an approaching vessel shall be so shielded that the lights will not blind the pilot of such vessel.

NOTE: Authority cited: Section 655.3, Harbors and Navigation Code. Reference: Section 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
2. Amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 6696. Unnecessary Use of Sound Signaling Device.

NOTE: Authority cited: Sections 652 and 655.3, Harbors and Navigation Code. Reference: Sections 652 and 655.3, Harbors and Navigation Code.

HISTORY

1. Repealer filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 6697. Prima–Facie Evidence of Negligent Operation.

Pursuant to the provisions of Section 655 of the Harbors and Navigation Code, the following described acts endanger life, limb or property and constitute evidence of reckless or negligent operation:

(a) Riding on the bow, gunwale or transom of a vessel propelled by machinery underway when such position is not protected by railing or other reasonable deterrent to falling overboard, or riding in a position or manner which is obviously dangerous. These provisions shall not apply to a vessel's crewmen in the act of anchoring, mooring or making fast to a dock or another vessel, or the necessary management of a sail.

(b) Maneuvering towed skiers, or other devices, so as to pass the towline over another vessel or its skier.

(c) Navigating a vessel, skis or other devices between a towing vessel and its tow or tows.

NOTE: Authority cited: Section 655, Harbors and Navigation Code. Reference: Sections 650, 655 and 655.3, Harbors and Navigation Code.

HISTORY

1. New section filed 10–13–72; effective thirtieth day thereafter (Register 72, No. 42).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment of NOTE filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

Article 5.1. Closure of Waterways to Recreational Boating

§ 6698.1. Definitions.

The following definitions shall apply to the terminology used in this article:

(a) "department" means the Department of Boating and Waterways.

(b) "director" means the director of the Department of Boating and Waterways.

(c) "Sacramento–San Joaquin Delta and its tributaries and distributaries" means all or any part of the area identified in Section 12220 of the California Water Code and waterways flowing into and out of the Sacramento–San Joaquin Delta.

(d) "recreational vessel" means a vessel being used only for pleasure.

NOTE: Authority cited: Sections 63.9(e) and 660(b) and (c), Harbors and Navigation Code. Reference: Sections 33, 63.9(e), 650, 651 and 660(b) and (c), Harbors and Navigation Code; Section 8558(b) and (c), Government Code; Executive Order W–156–97; and Attorney General Opinion No. 97–307.

HISTORY

1. New article 5.1 (sections 6698.1–6698.3) and section filed 2–6–98 as an emergency; operative 2–6–98 (Register 98, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–8–98 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 2).
3. Amendment of article heading and new section filed 1–4–99; operative 1–4–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

§ 6698.2. Director's Authority for Restrictions or Closures.

(a) During emergency situations, such as actual or projected high water levels or flooding, and in the interest of preserving the safety of persons and property, the director, or his or her designee, may restrict or order the closure of all or any part of the waters in the Sacramento–San Joaquin Delta, its tributaries and distributaries, and Suisun Bay, Grizzly Bay, and Honker Bay and their tributaries and distributaries to recreational vessels.

(b) In accordance with Section 660 of the Harbors and Navigation Code, all emergency restrictions or closures issued by the Department shall be effective for no more than 60 days. However, the director, or his or her designee may issue new restrictions or closures when the emergency is expected to continue beyond the 60 day period, after a public hearing is held by the department to receive comments from the public.

(c) The director, or his or her designee, may rescind or modify the restrictions or closures based on the status of the emergency conditions and/or the information or testimony provided at the public hearing referenced in subsection (b) above.

(d) When the director, or his or her designee, determines that the emergency situation, such as high water levels or flooding, has diminished, a notice shall be issued to law enforcement agencies, marinas, and news organizations rescinding the restrictions or closure.

NOTE: Authority cited: Sections 63.9(e) and 660(b) and (c), Harbors and Navigation Code. Reference: Sections 33, 63.9(e), 650 and 660(b) and (c), Harbors and Navigation Code; Executive Order W–156–97; and Attorney General Opinion No. 97–307.

HISTORY

1. New section filed 2–6–98 as an emergency; operative 2–6–98 (Register 98, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–8–98 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 2).
3. New section filed 1–4–99; operative 1–4–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

§ 6698.3. Removal of Restrictions or Closures.

NOTE: Authority cited: Sections 63.9(e) and 660(b) and (c), Harbors and Navigation Code. Reference: Sections 33, 63.9(e), 650 and 660(b) and (c), Harbors and Navigation Code; Section 8558(b) and (c), Government Code; and Executive Order W–156–97.

HISTORY

1. New section filed 2–6–98 as an emergency; operative 2–6–98 (Register 98, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–8–98 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 2).

Article 6. Waterway Marking System

§ 7000. Scope.

Pursuant to the authority vested in it by Section 659, Harbors and Navigation Code, the Department adopts rules and regulations for a uniform system for marking the State's waters; such rules and regulations to establish, (a) a system of regulatory markers for use on all waters of the State to meet needs not provided for by the U.S. Coast Guard system of navigational aids, and (b) a system of navigational aids for use on the waters of the State not marked by the U.S. Coast Guard and/or not determined to be United States navigable waters; provided that such rules and regulations shall not be in conflict with the markings prescribed by the U.S. Coast Guard.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

[The next page is 491.]

History

1. Amendment of Article 6 (Sections 7000 through 7008) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history see Registers 66, No. 43 and 69, No. 44.
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7001. Definition (as used in this article).

(a) Waterway marker is any device designed to be placed in, on or near the water to convey an official message to a boat operator on matters which may affect health, safety, or well being, except that such devices of the United States or an agency of the United States are excluded from the meaning of this definition.

(b) Regulatory Marker is a waterway marker which has no equivalent in the U.S. Coast Guard system of navigational aids.

(c) State Aid to Navigation is a waterway marker which is the equivalent of a U.S. Coast Guard aid to navigation.

(d) Buoy is any device designed to float which is anchored in the water and which is used to convey a message.

(e) Sign is any device for carrying a message which is attached to another object such as a piling, buoy, structure or the land itself.

(f) A Display Area is the area on a sign or buoy needed for display of a waterway marker symbol.

(g) Symbols are geometric figures such as a diamond, circle, rectangle, used to convey a basic message.

(h) "Department" means the Department of Boating and Waterways.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

History

1. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7002. Waterway Markers Used on the Waters of This State Shall Be As Follows.

(a) State Aids to Navigation.

(1) A red buoy or sign shall indicate that side of a channel to be kept to the right of a vessel when entering the channel from the main water body or when proceeding upstream; a green buoy or sign shall indicate that side of a channel to be kept to the left of a vessel when entering the channel from the main water body or when proceeding upstream.

These buoys or signs shall normally be used in pairs and only for the purpose of marking a clearly defined channel.

(2) A red and white vertically striped buoy or sign shall indicate the center of a navigable waterway.

(3) A red and green horizontally striped buoy or sign shall indicate a junction in the channel, or a wreck or obstruction which may be passed on either side. If the top band is red, the preferred channel is to the left when proceeding upstream or leaving the main water body. If the top band is green the preferred channel is to the right when proceeding upstream or leaving the main water body.

(4) White buoys shall indicate anchorage areas.

(5) The shapes of state aids to navigation shall be compatible with the shapes established by Coast Guard regulations for the equivalent Coast Guard aids to navigation.

(6) When lights are placed on buoys as an aid to navigation, their characteristics shall be compatible with those designated by Federal Regulations for federal aids to navigation. Red lights for this purpose shall be used only on red buoys and green lights only on green buoys.

(b) Regulatory Markers.

(1) A diamond shape of international orange with white center shall indicate danger. The nature of the danger may be indicated by words or well–known abbreviations in black letters inside the diamond shape, or above and/or below it on white background.

(2) A diamond shape of international orange with a cross of the same color within it against a white center without qualifying explanation shall indicate a zone from which all vessels are excluded.

(3) A circle of international orange with white center will indicate a control or restriction. The nature of the control or restriction shall be indicated by words, numerals, and/or well–known abbreviations in black letters inside the circle. Additional explanation may be given above and/or below it in black letters on white background.

(4) A rectangular shape of international orange with white center will indicate information, other than a danger, control or restriction, which may contribute to health, safety or well–being. The message will be presented within the rectangle in black letters.

(c) Letters or Numbers on Waterway Markers.

(1) Numbers, letters or words on a state aid to navigation or regulatory marker shall be placed in a manner to enable them to be clearly visible to an approaching or passing vessel. They shall be block style, well proportioned and as large as the available space permits. Numbers and letters on red or black backgrounds shall be white; numbers and letters on white backgrounds shall be black.

(2) State aids to navigation shall be numbered or lettered for identification. Red buoys and signs marking channels shall be identified with even numbers, and green buoys and signs marking channels shall be identified with odd numbers, the numbers increasing from the main water body or proceeding upstream. Buoys and signs indicating the center of a waterway or a channel junction shall be identified by letters of the alphabet. All numbers and letters used to identify state aids to navigation shall be preceded by the letters "CF."

(d) Reflectorized Material. Where reflectorized materials are used, a red reflector will be used on a red buoy, a green reflector on a green buoy, and white reflectors only will be used on all other waterway markers, except that orange reflectors may be used on orange portions of regulatory markers, and yellow reflectors may be used on Special Markers, as defined in Section 7002.1.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

History

1. Amendment filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).
2. Editorial correction of NOTE filed 10–11–85 (Register 85 No. 41).

§ 7002.1. Special Markers.

Special markers are not primarily intended to assist navigation, but are used to indicate a special area or feature (i.e., traffic separation, anchorage areas, dredging, fish net areas, etc.) whose nature may be apparent from reference to a chart or other nautical document.

(a) Aids used to mark these areas or systems will be all yellow.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650, 655.3, and 659, Harbors and Navigation Code.

History

1. New section filed 3–15–85; effective thirtieth day thereafter (Register 85, No. 11).

§ 7003. Authority to Place Markers.

(a) No waterway marker shall be placed on, in, or near the waters of the State unless such placement is authorized by the agency or political subdivision of the State having power to give such authorization, except that the provisions of this section shall not apply to private aids to navigation under the jurisdiction of the U.S. Coast Guard.

(b) Such agency or political subdivision of the State will, prior to authorizing placement, obtain the necessary clearances of any federal and state agencies concerned. Nothing herein contained shall be construed to require such prior clearance with the Department.

(c) The agency or political subdivision of the State authorizing the placement of a waterway marker will inform the Department of the following:

(1) Exact location of the marker, expressed in latitude and longitude, or in distance and direction from one or more fixed objects whose precise location is known.

(2) The description and purpose of the marker, including its identifying number, if any, as required by Section 7002(a)(5), above.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7004. Maintenance of Waterway Markers.

Waterway markers shall be maintained in proper condition, or be replaced or removed.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7005. Display of Waterway Markers.

(a) A waterway marker may be displayed as a sign on a fixed support, as a buoy bearing a symbol on its surface, or as a sign mounted on a buoy.

(b) When a buoy is used to carry a symbol on its surface, it will be white, with a band of international orange at the top and a band of international orange above the water line at the bottom.

(c) A buoy whose sole purpose is to carry a sign above it will be marked with three bands of international orange alternating with two bands of white, each band occupying approximately one–fifth of the total area of the buoy above the water line, except where the sign itself carries orange bands; however, nothing in these regulations will be construed to prohibit the mounting of a sign on a buoy which has been placed for a purpose other than that of carrying a sign.

(d) When symbols are placed on signs, a suitable white background may be used outside the symbol.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7006. Specifications for Waterway Markers.

(a) The size, shape, material, and construction of all markers, both fixed and floating, shall be such as to be observable under normal conditions of visibility at a distance such that the significance of the marker or aid will be recognizable in time to avoid danger.

(b) Waterway markers shall be made of materials which will retain, despite weather and other exposures, the characteristics essential to their basic significance, such as color, shape, legibility and position.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7007. Other Waterway Marking Devices.

(a) Mooring Buoys. In order that mooring buoys shall not be mistaken for aids to navigation or regulatory markers, they shall be white, with a blue band clearly visible above the waterline.

(b) Placement of markers such as mooring buoys and permanent race course markers will be processed in the same manner as waterway markers.

(c) Such markers shall not be of a color, shape, configuration or marking which could result in their confusion with any federal or state aid to navigation or any state regulatory marker, and shall not be placed where they will obstruct navigation, cause confusion, or constitute a hazard.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650 and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41). 2. Amendment of subsection (a) filed 11–25–87; operative 12–25–87 (Register 87, No. 49).

§ 7008. The Divers Flag.

(a) A red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner) and known as the "Divers Flag" shall when displayed on the water, indicate the presence of a person engaged in diving in the water in the immediate area.

(b) Recognition of this flag by regulation will not be construed as conferring any rights or privileges on its users, and its presence in a water area will not be construed in itself as restricting the use of the water area so marked.

(c) Operators of vessels will, however, exercise precaution commensurate with conditions indicated.

(d) This flag may be displayed only when diving is in progress, and its display in a water area when no diving is in progress is that area will constitute a violation of the regulation and of section 659 of the Harbors and Navigation Code.

(e) Nothing in this section will require the carriage of a divers flag for any purpose.

NOTE: Authority cited: Section 659, Harbors and Navigation Code. Reference: Sections 650, and 659, Harbors and Navigation Code.

HISTORY
1. Editorial correction on NOTE filed 10–11–85 (Register 85, No. 41).
2. Amendment of subsection (d) substituting "may" for "shall" and new subsection (e) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7009. The Ski Flag.

(a) A red or orange flag measuring no less than 12 inches on each side, in the shape of a square or rectangle, mounted or displayed in such a manner as to be visible from every direction shall be known as a ski flag.

(b) The use of this flag will not be construed as conferring any rights or privileges on its users, and its display will not be construed in itself as restricting the use of the water in the vicinity of the vessel displaying the flag.

(c) Operators of vessels will, however, exercise precaution commensurate with conditions indicated.

(d) The ski flag shall be displayed when one or more of the following conditions exists.

(1) A downed skier.

(2) A skier in the water preparing to ski.

(3) A ski line extended from the vessel.

(4) A ski in the water in the vicinity of the vessel. The ski flag shall not be displayed at any other time.

NOTE: Authority cited: Sections 652, 658, 658.7 and 659, Harbors and Navigation Code. Reference: Sections 650, 655.3, 658.7 and 659, Harbors and Navigation Code.

HISTORY
1. New section filed 1–28–83; effective thirtieth day thereafter (Register 83, No. 5).
2. Amendment of subsection (d) substituting "may" for "shall" and new subsection (e) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).
3. Amendment of subsections (a)–(b) and (c) and NOTE, new subsections (d)(1)–(4) and repealer of subsection (e) filed 10–17–91; operative 11–18–91 (Register 92, No. 30).

Article 7. For Hire Vessel Operator's License

§ 7500. Definitions.

(a) As used in Article 2, (commencing with Section 760) Chapter 5 of Division 3, Harbors and Navigation Code, the terms "carrying more than three passengers for hire" and "carrying passengers for hire" mean the carriage of more than three persons by a vessel for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person interested in the vessel.

(b) "Passenger" means every person, other than the master and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.

(c) "Department" means the Department of Boating and Waterways.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Section 760, Harbors and Navigation Code.

HISTORY
1. Amendment of Article 7 (§§ 7500 through 7505) filed 5–11–71; effective thirtieth day thereafter (Register 71, No. 20). For prior history see Registers 66, No. 43 and 69, No. 8.
2. Amendment of subsection (a) filed 1–18–77; effective thirtieth day thereafter (Register 77, No. 4).
3. Amendment filed 2–16–79 as procedural and organizational; effective upon filing (Register 79, No. 7).

4. Amendment of subsection (a) filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).

5. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7501. Requirements for Examination.

(a) Prior to the issuance of a For–Hire Vessel Operator's License, every applicant shall meet the following requirements:

(1) Have attained the age of eighteen (18) years.

(2) Show evidence of at least one year's experience in operating the type of motorboat or motor vessel for which the applicant requests license to operate, on the type of water for which applicant requests license to operate.

(A) (Reserved)

(B) Other experience or training, which in the judgment of the Department is a reasonable equivalent, may be substituted.

(3) Furnish information to the Department on forms provided by the Department regarding the following:

(A) Name, address, date and place of birth, and description of applicant.

(B) Type of vessel the applicant requests license to operate.

(C) Waters on which applicant requests license to operate.

(D) Statement as to physical defects.

(E) Statement of experience and training in vessel operation.

(F) Certified statements regarding applicant's boat handling ability and moral character from three persons having knowledge of these matters but who are not members of the applicant's family.

(G) Certification of the truth of the statements submitted in his application.

(H) Applicant's signature.

(4) Submit a report, on forms provided by the Department, of a medical examination by a licensed physician within sixty (60) days of the date of application indicating:

(A) Diseases and other physical or mental defects. Conditions such as epilepsy, insanity, senility, acute general disease or neurosyphilis, badly impaired hearing, or other defect that would render the applicant incompetent to perform the ordinary duties of a licensed operator are grounds for refusal to issue a license.

(B) Possession, either with or without glasses, of at least 20/20 vision in one eye and at least 20/40 in the other. The applicant who wears glasses, however, must also be able to pass a test without glasses of at least 20/100 in both eyes.

(C) Unimpaired color sense as tested by a test utilized by the U.S. Coast Guard to determine color sense, or a similar test. This requirement may be waived if the operation of vessels for which the license is sought will be limited to hours of daylight; provided that any license issued on the basis of such waiver will be limited to operation of vessels during hours of daylight.

(D) Any of the requirements of this subdivision (4) may be waived where the Department determines that because of exceptional and unusual experience and skill or because of other unusual qualifications, the applicant evidences that he is a reliable and competent operator of the type of vessel for which he requests license to operate, on the water on which he requests license to operate. In granting any such waiver, the Department may impose such restrictions, limitations and conditions on the operation of for–hire vessels by such applicant as the Department deems necessary for the safety and protection of all persons carried on board such vessels.

(5) Successfully complete a written test of knowledge of factors affecting boat operation, including:

(A) State laws and regulations governing operation and equipment of undocumented vessels.

(B) Fire protection measures.

(C) Vessel and motor maintenance.

(D) Navigational aids.

(E) Safe operation of motorboats.

(F) First aid and life saving measures.

(6) In addition to the above requirements, an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a vessel may also be required.

(b) Upon presentation to the Department of a valid master's, mate's, or operator's license issued by the U.S. Coast Guard as authorized by 46 CFR 15.605 and 15.607, the Department may waive the requirements listed in subdivisions (2), (3) (F), (4), (5) and (6) of subsection 7501(a).

(c) The Department may at any time terminate restrictions, limitations and conditions placed on a license whenever the licensee furnishes evidence that the basis for the restrictions, limitations and conditions no longer exists.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Section 767, Harbors and Navigation Code.

HISTORY

1. Amendment of subsection (a)(4)(B) filed 9–6–73; effective thirtieth day thereafter (Register 73, No. 36).

2. Order of Repeal of subsection (a)(2)(A) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

3. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

4. Amendment of subsection (b) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7501.1. Time Periods for Processing For–Hire Vessel Operator's License.

(a) The Department shall notify the applicant, in writing, within 10 days from receipt of application that the application is complete, or that the application is deficient, and what specific information is required.

(b) The Department shall then process the completed application for license, as required by Sections 762 and/or 767 of the Harbors and Navigation Code, and reach a decision to issue a license within 30 to 90 days, the median being 60 days.

NOTE: Authority cited: Section 764, Harbors and Navigation Code. Reference: Sections 762, 765 and 766, Harbors and Navigation Code; and Section 15376(a)–(c), Government Code.

HISTORY

1. New section filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).

§ 7502. Grounds for Refusal to Issue License.

The Department may refuse to issue a license for any of the following reasons:

(a) Failure of the applicant to meet the requirements set forth in Subdivisions (1) through (6) of Subsection 7501(a).

(b) Habitual use by the applicant of intoxicating liquor, or any narcotic drug, barbiturate or marijuana.

(c) Material misrepresentation or false statements in any application.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Section 766, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7503. Renewal of License.

Following are the requirements for renewal of licenses:

(a) Applicant must present evidence of satisfactory operation of vessels during the past five years, including at least one year of operation of the type of motorboat or motor vessel for which license was issued, on the type of water for which license was issued, or present other experience of training which, in the judgment of the Department, is a reasonable equivalent.

(b) Applicant must submit a report, on forms provided by the Department, of a medical examination by a licensed physician within 60 days of the date of the application for renewal indicating:

(1) Diseases and other defects. Conditions such as epilepsy, insanity, senility, acute general disease or neurosyphilis, badly impaired hearing, or other defect that would render the applicant incompetent to perform the ordinary duties of a licensed operator are grounds for refusal to renew a license.

(2) Possession, either with or without glasses, of at least 20/20 vision in one eye and at least 20/40 in the other. The applicant who wears

glasses, however, must also be able to pass a test without glasses of at least 20/100 in both eyes.

(3) Unimpaired color sense as tested by a test utilized by the U.S. Coast Guard to determine color sense, or a similar test. This requirement may be waived if the operation of vessels under the license will be limited to hours of daylight; provided that any license renewed on the basis of such waiver will be limited to operation of vessels during hours of daylight.

(4) Any of the requirements of this subsection (b) may be waived where the Department determines that because of exceptional and unusual experience and skill or because of other unusual qualifications, the applicant evidences that he is a reliable and competent operator of the type of vessel for which he requests license to operate, on the water on which he requests license to operate. In granting any such waiver, the Department may impose such restrictions, limitations and conditions on the operations of for–hire vessels by such applicant as the Department deems necessary for the safety and protection of all persons carried on board such vessels.

(c) Upon presentation to the Department of a valid master's, mate's or operator's license issued by the U.S. Coast Guard as authorized by 46 CFR 15.605 and 15.905, the Department may waive the requirements listed in subsection (b) of this section.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Section 767, Harbors and Navigation Code.

HISTORY

1. Amendment of subsection (b)(2) filed 9–6–73; effective thirtieth day thereafter (Register 73, No. 36).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
3. Amendment of subsection (c) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7504. Provisions Affecting Use of License.

(a) No licensee or holder of an operator's license shall operate any for–hire vessel in violation of the terms and conditions upon which such license is issued, nor shall operate any vessel carrying passengers for hire subject to the provisions of this article, other than of the type designated on his license nor operate such vessel on any waters other than those designated on his license.

(b) The licensee shall notify the Department of any change of address within 30 days of such change.

(c) The operator of any vessel subject to the provisions of this article and article 2 (commencing with section 760) chapter 2, division 3, of the harbors and navigation code, shall have his license as operator in his possession and available for examination at all times when the vessel in being operated.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Sections 761, 767 and 769, Harbors and Navigation Code.

HISTORY

1. New NOTE filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7505. Investigations.

(a) The Department may make periodic or special investigation of any licensee to ascertain his competence and physical condition with respect to operating for–hire vessels.

(b) The Department may investigate the operation of any vessel subject to this article and article 2 (commencing with section 760) chapter 2, division 3 of the Harbors and Navigation Code, for the sole purpose of ascertaining compliance therewith.

NOTE: Authority cited: Section 770, Harbors and Navigation Code. Reference: Sections 764, 765, 766, 767 and 769, Harbors and Navigation Code.

HISTORY

1. New NOTE filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

Article 8. Yacht and Ship Broker Licenses

§ 7601. General Definitions.

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases, and references appearing in this Chapter shall have meanings as ascribed herein.

(a) An "exclusive listing" is a written agreement between the owner of a vessel and a broker which provides that the commission is due the broker named in the contract if the boat is sold, traded, or exchanged within the time limit which must be specified in the contract by the said broker, by any other broker, or by the owner.

(b) An "open listing" is a written agreement between the owner of a vessel and a broker which authorizes the broker to negotiate the sale, trade, or exchange of the vessel, but reserves to the owner the right, without incurring a liability for the payment of a commission to said broker, to negotiate the sale, trade, or exchange of said vessel himself, or to enter into open listing agreements with other brokers respecting said vessel.

(c) "Advertising" is any written or printed communication or oral communication made in accordance with a text or outline that has been reduced to written form which is published for the purpose of inducing persons to sell or purchase a product or use a service.

(d) An "applicant" is a person applying to the Department of Boating and Waterways for a license.

(e) The "Act" is the Yacht and Ship Brokers Act and regulations pertaining thereto.

(f) The "Code" is the Harbors and Navigation Code.

(g) The "Director" is the Director of the Department of Boating and Waterways.

(h) The "Department" is the Department of Boating and Waterways.

(i) An "examination" is an examination to qualify for any license issued under authority of the Yacht and Ship Brokers Act.

(j) A "license" is any license issued under authority of the Yacht and Ship Brokers Act.

(k) The "licensee" is a licensed broker or salesman.

(l) A "permanent license" is a Yacht and Ship Broker's or Salesman's License originally issued for one year and renewable for one or two years, as opposed to a salesman's temporary license issued for sixty days.

(m) The "Yacht and Ship Brokers Act" is Chapter 5 of Division 3, Article 2 of the Code.

(n) "Consummated" means that buyer and seller shall have a signed purchase agreement, which agreement shall contain all the conditions of the sale, and said conditions have been met.

(o) "Completed" means all the conditions of the purchase agreement have been met and the bill of sale has been passed from seller to buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 701, Harbors and Navigation Code.

HISTORY

1. Repealer of Article 8 (Sections 7601–7631, not consecutive, and new Article 8 (Sections 7601–7622) filed 12–1–78; effective thirtieth day thereafter (Register 78, No. 48). For prior history, see Registers 66, No. 43; 68, No. 46; 69, No. 10; 69, No. 30; 69, No. 46; 70, No. 11; 70, No. 19; 71, No. 20.
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7602. Advertising.

(a) Advertising of any service for which a license is required under the provisions of the Yacht and Ship Brokers Act shall disclose the name of the business as shown on the required license.

(b) In addition to the name of the broker on signs or in advertising, the words "licensed yacht broker," "yacht broker," "ship broker," or "boat broker," or "brokerage" in each such context may be used to indicate that the broker is a licensed yacht broker.

(c) No person, firm, or corporation may use any of the designations set forth in subdivision (b) hereof unless duly licensed under the Yacht and Ship Brokers Act, or otherwise exempted by law.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 708, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7603. Investigative Authority.

(a) The department may, with reasonable cause to suspect that a person or business is acting in the capacity of a broker, investigate that person or business to ascertain whether a license is or is not required.

(b) The department shall have authority to investigate and take lawful action deemed advisable with regard to complaints against brokers or salesmen acting only in a capacity for which they must be licensed.

(c) Any person, including a partnership or corporation purchasing used yachts for resale or taking yachts in trade for resale, shall transfer actual title to any such yacht into his name, or have in his possession, subject to inspection by the department, a good and sufficient bill of sale or other fit evidence of title if such person or firm wishes to claim exemption from licensing requirements of the Yacht and Ship Brokers Act.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 706, 720, 732, 733 and 734, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7604. Trust Accounts.

(a) In the absence of the broker, a licensed salesman authorized in writing by the broker, or other persons authorized by this section to make withdrawals from trust accounts, shall make deposits to trust accounts pursuant to section 714 of the Harbors and Navigation Code.

Withdrawals shall not be made from a trust account maintained as provided by section 714 of the Harbors and Navigation Code except upon the signature of at least one of the following:

(1) The broker;

(2) A salesman, or group of salesmen jointly who are in the employ of the broker and who have been authorized in writing by the broker to make withdrawals from such trust accounts. The broker shall not authorize more than one salesman or group of salesmen at any one time to make such withdrawals;

(3) Where the licensee is a corporation, any corporate officer who may be designated in writing by the corporation.

(b) Every broker required to maintain such trust fund account shall keep records of all funds deposited therein, which records shall clearly indicate the date and from whom he received the money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction.

(c) Failure to maintain a trust fund account when required, and to deposit trust funds received promptly in said account, may be construed to be commingling, in violation of section 732, subsection (e) of the Harbors and Navigation Code.

(d) Upon request, the above–written authorization shall be made available to the department for its inspection.

(e) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(f) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (e) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account or into the hands of the offeree if offeror and offeree expressly so provide in writing not later than the next business day following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

NOTE: Authority cited; Section 703, Harbors and Navigation Code. Reference: Sections 714 and 716, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
2. New subsections (e) and (f) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7605. Shared Listings.

If a broker intends to or does share a listing with other brokers, he must obtain authorization in writing from his principal to do so in his authorization to sell (listing agreement).

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 716, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7606. Fees.

In addition to license examination fees required by Sections 717 and 718 of the Harbors and Navigation Code to accompany applications for licenses, all other appropriate fees prescribed by Section 736 shall accompany such applications.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 736, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7606.1. Time Periods for Processing Yacht and Ship Broker, Salesman, and Associated Licenses.

(a) The Department shall notify the applicant, in writing, within 10 days from receipt of application, that the application is complete, or that the application is deficient, and what specific information is required.

(b) The Department shall then process the completed application for license(s), as required by Sections 717, 718, 722, 723, 724, 725, 727,728, 729, and/or 735, Harbors and Navigation Code, and reach a decision to issue a license within 30 to 90 days, the median being 60 days.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 724, Harbors and Navigation Code; and Section 15376(a)–(c), Government Code.

HISTORY

1. New section filed 10–31–83; effective thirtieth day thereafter (Register 83, No. 45).

§ 7607. Written Examination.

An applicant who fails to appear for a scheduled written examination without notifying the Department prior to the exam date shall forfeit the examination fee and be required to pay an additional exam fee prior to taking any subsequent examination.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 721, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7608. Broker Qualifications.

(a) In addition to those persons specified in Section 719 of the Harbors and Navigation Code, if an individual can show that department records are incorrect, and he can, in fact, prove that he has been employed as a licensed Yacht and Ship Broker or Salesman for at least one year within the preceding five years, such applicant shall be deemed qualified to take the Yacht Broker's examination for a Yacht and Ship Broker's License.

(b) In addition to applicants described in Section 719(d), every applicant for a broker's or salesman's license and every person entitled to act in the capacity of a broker on behalf of a corporation or partnership shall be at least 18 years of age.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 719, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7609. License Reinstatement.

Application for reinstatement of a license shall be on a form furnished by the department and must be accompanied by the appropriate fees.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 726 and 736, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7610. License Renewal (Failure to) Penalties.

(a) (Reserved)

(b) Any licensee who has failed to notify the department of a change of address, business structure, or in the case of a salesman, employing broker prior to renewal of license, and who does not submit the proper fee or fees for such change along with his renewal application and whose renewed or changed license is delayed beyond the expiration date of the license all or partly because of such failure, shall be subject to the penalty for reinstatement under provisions of Section 724(b) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 722, 723, 724, 726 and 738, Harbors and Navigation Code.

HISTORY

1. Order of Repeal of subsection (a) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).
2. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7611. Temporary Salesman's License.

(a) For purposes of Section 719(a) of the Harbors and Navigation Code, experience while holding a temporary license as a salesman shall not be considered as partial experience necessary to qualify for a broker's license.

(b) In the event a salesman having the only temporary license permitted by subsection 725(a) of the Harbors and Navigation Code does not obtain a permanent license, and two years have passed since the expiration date of such temporary license, the department may issue another temporary license, pursuant to provisions of subsection 726(a) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation$Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7612. Salesman's License, Transfer of, Restrictions on Employment.

(a) A temporary license to act as a salesman will be issued only to an applicant who has valid employment as such salesman with a duly licensed broker.

(b) A salesman's license or temporary salesman's license shall become inoperative upon the termination of such salesman's employment by a licensed broker, or upon the suspension or revocation of the employing broker's license. However, such salesman's license may be transferred to another licensed broker upon the holder's request. Such request for transfer must be accompanied by an application, as prescribed by the department, in writing executed by the new broker and the appropriate fee.

(c) No salesman shall associate himself with more than one broker concurrently.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7613. Corporation and Partnership Licenses.

(a) A broker's license issued to a corporation or partnership shall disclose the name and license number of the corporation or partnership, along with the name of the officer or partner entitled to act on behalf of the corporation or partnership. Additional licenses issued to other officers or partners acting on behalf of the corporation or partnership only shall disclose the name and license number of the corporation or partnership, followed by the name of such additional officers or partners. In the event the corporation or partnership is dissolved, all licenses disclosing the name and number of the corporation or partnership become invalid.

(b) In the event a licensed partner of a partnership, who is also licensed as a broker on his own behalf while acting on behalf of the partnership, violates any provision of the Yacht and Ship Brokers Act or regulations pertaining thereto, which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed partner, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on behalf of the partnership are both subject to such suspension or revocation, and if necessary, his bond is subject to attachment.

(c) In the event a licensed officer of a corporation, who is also licensed as a broker on his own behalf while acting on behalf of the corporation, violates any provision of the Act or regulations pertaining thereto which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed officer of a corporation, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on behalf of the corporation are both subject to such suspension or revocation and his bond is subject to attachment.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 728 and 729, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7614. Broker's Bond or Deposit.

(a) The Yacht and Ship Broker's Bond Endorsement used shall be of the form prescribed and provided by the department.

(b) The department may not release its interest in a cash deposit made pursuant to section 731 of the Harbors and Navigation Code until a surety bond, dated to include the period for which the cash deposit was made, is filed with the department.

(c) The period required by subsection (b) will not exceed four years.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 730 and 731, Harbors and Navigation Code.

HISTORY

1. New subsections (b) and (c) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7615. Coercive and Oppressive Methods.

It shall constitute coercive and oppressive methods within the meaning of Section 732, subsection (g) of the Harbors and Navigation Code, if a licensee who is also the owner, operator, or otherwise in charge of a landing pier or mooring place:

(a) Exacts or demands all or part of a broker's fee or commission from the sale by the owner or any other licensed broker or salesman of any yacht or boat moored at said landing pier or mooring place solely because said yacht or boat was or is moored at such pier or landing place;

(b) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by an owner of a boat or yacht for the reason that said boat or yacht is listed for sale with another licensee;

(c) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by the purchaser of a boat or yacht moored at such landing pier or mooring place because another licensee had made the sale of such boat or yacht.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 732 and 733, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
4. Amendment of first paragraph filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

§ 7616. Definite Place of Business.

A definite place of business shall mean premises owned, rented, or leased by the broker which premises shall be locatable at a street address or road intersection and/or slip number, if applicable. A post office box and/or telephone number shall not be considered a definite place of business.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7617. Branch Offices.

(a) Any broker who regularly transacts business at a location other than his established principal office, or who employs other brokers or salesmen to do so shall be deemed to be maintaining a branch office at such location.

(b) A temporary exhibit of less than three weeks duration at a county or state fair or an organized boat or sport show shall not be deemed a branch office.

(c) If a broker uses more than one fictitious business name at the same location, a separate branch office license shall be obtained in addition to the current principal or branch office license at that location.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections708 and 735, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).
2. New subsection (c) filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7618. Identification Card.

(a) A broker's identification card shall be issued only to the person named on the license, and there shall also appear on such card the name of the corporation, partnership or association which he represents. The broker to whom such identification card is issued shall place his signature thereon.

(b) A salesman's identification card shall be issued only to a licensed salesman, and shall bear the name of the employing licensed broker. The salesman shall place his signature thereon.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7619. Broker–Salesman Relationship Agreement.

Every broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker–salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties.

Signed copies of the agreement shall be retained by the parties thereto, and shall be available for inspection by the department or its designated representative on request.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 703, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7620. Retention of Records.

A licensed broker shall retain for four years copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by him or obtained by him in connection with a transaction for which a Yacht and Ship Broker's License is required. Upon request, these records shall be made available to the Department for their inspection.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 714, 715 and 716, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7621. Government Office.

When the holder of a Yacht and Ship Broker or Salesman's License is required to relinquish his license to assume an office in local, state, or federal government, he may have it reinstated at any time within six months of termination of his service in such office upon payment of the appropriate renewal fee.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 724, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7622. Property Taxes.

Any agreement between a buyer and seller of a yacht negotiated by a broker to prorate personal property taxes for a twelve–month period shall specify the applicable tax year and the date of the commencement of such twelve–month period, and shall clearly state the actual amounts payable by the seller and buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703 and 716, Harbors and Navigation Code.

HISTORY

1. Editorial correction of NOTE filed 10–11–85 (Register 85, No. 41).

§ 7623. Offers.

(a) The licensee must present or cause to be presented to the owner of the vessel any offer to purchase received prior to the completion of a sale, unless expressly instructed by the owner not to present such an offer.

(b) A licensee shall not present competing offers to purchase a vessel to the owner in such manner as to induce the owner to accept an offer which will provide the greatest compensation to the licensee, without regard to the benefits, advantages, and/or disadvantages to the owner.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 709 and 716(c), Harbors and Navigation Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

Article 9. Small Boat Towing and Safety

§ 7700. Definitions.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code. Reference: Sections 610, 611, 612, 615, 616, 617, 618, 620 and 622, Harbors and Navigation Code.

HISTORY

1. New article 9 (sections 7700–7710) filed 12–3–85; effective thirtieth day thereafter (Register 85, No. 49).
2. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7701. Applications for Certificate of Registration of a Small Boat Towing Service.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code. Reference: Sections 611, 615, 616 and 622, Harbors and Navigation Code.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7702. Requirements for Certificate of Registration.

NOTE: Authority cited: Sections 615, 621 and 652, Harbors and Navigation Code. Reference: Chapter 4.3 (commencing with section 610), Division 3, Harbors and Navigation Code; and Section 1760.5, Insurance Code.

HISTORY

1. Amendment of subsection (d)(3) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
2. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7703. Partnership Certificate of Registration.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code. Reference: Section 611, 612 and 615, Harbors and Navigation Code.

HISTORY

1. Amendment of subsection (d)(3) filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
2. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7704. Corporation Certificate of Registration.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code. Reference: Section 611, 612 and 615, Harbors and Navigation Code.

HISTORY

1. Amendment of section heading filed 8–28–86; effective thirtieth day thereafter (Register 86, No. 35).
2. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7705. Authorized Operators.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code. Reference: Sections 611, 612, 615 and 622, Harbors and Navigation Code.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7706. Grounds for Refusal to Issue Certificate of Registration.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7707. Suspension of Certificate of Registration.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7707.1. Refusal to Issue.

NOTE: Authority cited: Sections 621 and 652, Harbors and Navigation Code.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7708. Provisions Affecting Use of Certificate of Registration.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7709. Time Periods for Processing.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

§ 7710. Arbitration Fees.

HISTORY

1. Repealer filed 4–2–90; operative 5–2–90 (Register 90, No. 17).

Article 10. Boating Safety Education Regulations

§ 8000. Criteria for Required Boating Safety Course.

(a) The Department shall approve and maintain an approved listing of boating safety education courses.

(b) Boating safety education courses approved by the Department shall be general, entry level courses. The courses shall contain at least the following elements or subjects:

(1) Boating laws and regulations
(2) Rules of the road and navigational lights
(3) Safety and responsibility
(4) Required equipment
(5) Basic boat handling
(6) Navigational aids (Uniform State Waterway Marking System)
(7) Boating operation emergencies and accidents
(8) Alcohol
(9) Weather.

(c) The certificate for completion and passage of the course shall include:

(1) The name of the person passing the course.
(2) Date of course completion.
(3) The name of the organization that provided the course.
(4) A statement that the course has been approved by the California Department of Boating and Waterways.

(d) The fees for these approved boating education courses shall not exceed the expenses associated with providing the courses.

NOTE: Authority cited: Section 668.1, Harbors and Navigation Code. Reference: Sections 655, 655.2, 658, 658.5 and 668.1, Harbors and Navigation Code; and section 191.5, Penal Code.

HISTORY

1. New section filed 10–17–91; operative 11–18–91 (Register 92, No. 30).
2. Amendment of subsection (d) filed 7–24–96; operative 8–23–96 (Register 96, No. 30).

Article 11. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 8100. Purpose.

The purpose of the selection process for private architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms is to provide procedures that assure such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the Department of Boating and Waterways.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

HISTORY

1. New article 11 (sections 8100–8100.13) and section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.1. Definitions.

The following definitions shall be used in this article.

(a) "Architectural, landscape architectural, engineering, environmental, land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(b) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 of the Government Code for management and supervision of work performed on state construction projects.

(c) "Contract" means any agreement entered into by the Department for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Department" means the Department of Boating and Waterways.

(e) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

(f) "Multiple Contracts" means contracts that may be awarded to multiple firms.

(g) "On–Call Contracts" means contracts for projects that involve more than one component, site, or activity.

(h) "Single Firm Contract" means a contract that is let to the single most qualified firm.

(i) "Small Business" is a firm that meets the definition of "small business" provided in Government Code Section 14837.

(j) "Specific Project Contract" is a contract for a project that involves a single subject matter and may result in a single contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526 and 14837 Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.2. Contract Types.

(a) The Department may utilize specific project contracts, single firm contracts, multiple contracts, or on–call contracts depending on the specific situation. All contract types are subject to this Article.

(b) Multiple contracts may be awarded for contracts that cover different, specific geographic regions; contracts that encompass different specific, unique disciplines; or contracts for which there would be a primary contractor, with a backup contractor in the event the primary contractor is unavailable for the assignment.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.3. Selection Criteria.

The Department shall establish selection criteria that will comprise the basis for the selection of eligible firms to perform the required services. The criteria may include such factors as professional experience of the firm in performing services of similar nature; quality and relevance of recently completed or ongoing work; reliability, continuity, and location of firm to the project site; staffing capability; education and experience of key personnel to be assigned; knowledge of applicable regulations and technology associated with the services required; specialized experience of the firm in the services to be performed; participation as small business firm; and other factors the Department deems relevant to the specific task to be performed.

The Department may weigh these factors according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.5, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.4. Request for Qualifications.

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and in the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, at a minimum, a brief description of the services required, location and duration of services, criteria upon which the award will be made, submittal requirements, contact person for the Department, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Department shall identify potentially qualified small business firms interested in contracting with the Department, and shall provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Department to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, 4527 and 14825, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.5. Annual Submission of Qualifications.

In compliance with Government Code section 4527, interested firms may submit their qualifications and performance data to the Department annually throughout the year. The Department may consider such qualifications and performance data when selecting a contractor in accordance with Section 8100.6. Such qualifications and performance data that are on file with the Department for longer than one year, and not subsequently renewed or refiled, shall not be considered by the Department in its selection process.

NOTE: Authority cited: Section 4527, Government Code. Reference: Section 4527, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.6. Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Department shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria in the published project announcement, and rank, in order of preference, the firms determined as most highly qualified to perform the required services.

(b) The Department shall conduct discussions with at least the three most eligible firms, or a lesser number if fewer than three eligible firms have responded, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Department shall select, in order of preference, not less than three firms, or lesser number if fewer than three eligible firms responded, deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.7. Negotiation.

(a) From among the firms selected in Section 8100.6, as most highly qualified to perform the services required, the Department shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable.

(b) If the Department is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) Where the Department is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Department shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Department shall abandon the negotiation process for the required services.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.8. Estimated Value of Services.

(a) Before entering into discussion with any firm selected pursuant to Section 8100.6, Department staff shall prepare an estimate of the value of the proposed contract, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of Section 8100.7, and shall not be disclosed until award of the contract or abandonment of the negotiation process for the services to which it relates.

(b) At any time the Department determines the estimate prepared in accordance with (a) to be unrealistic for any reason, the Department shall reevaluate the estimate and, if necessary, modify the estimate.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.9. Amendments.

Where the Department determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions and specifications for the services involved, with a reasonable adjustment in the firm's compensation.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.10. Contracting in Phases.

Where the Department determines it is necessary or desirable for a project to be performed in separate phases, the Department may negotiate a partial compensation for the initial phase of the services required; provided, however, the Department first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Department may, at its option, utilize the firm to perform other phases of the services at a compensation which the Department determines is fair and reasonable, to be later negotiated and included in a mutual written agreement. In the event that the Department exercises its option under the contract to utilize the firm to perform other

phases of the project, the procedures of Sections 8100.7 and 8100.8, regarding estimates of value of services and negotiation shall be followed.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.11. Department's Power to Require Bids.

If the Department determines that the services are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract may be awarded on the basis of competitive bids and not the procedures of this Article.

NOTE: Authority cited: Section 4526, Government Code. References: Section 4529, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.12. Unlawful Considerations.

Each contract shall include a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations either promised or paid to any Department employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contract.

NOTE: Authority cited: Section 4526, Government Code. References: Section 4526, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

§ 8100.13. Prohibited Relationships.

No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Sections 4526 and 4527, Government Code. References: Sections 4526, 4527, 87100 and 87102, Government Code.

HISTORY

1. New section filed 5–3–2004; operative 5–3–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 19).

Chapter 2. Regulations for Implementation of the California Environmental Quality Act of 1970

NOTE: Authority cited: Section 21082, Public Resources Code; and Section 63.9, Harbors and Navigation Code. Reference: Sections 21000, 21174, Public Resources Code; and Sections 71.4 and 72.5, Harbors and Navigation Code.

HISTORY

1. New Chapter 2 (§§ 8500 through 8530, not consecutive) filed 6–15–73; effective thirtieth day thereafter (Register 73, No. 24).
2. Amendment filed 5–13–80; effective thirtieth day thereafter (Register 80, No. 20).
3. Repealer of Chapter 2 (Articles 1–6, Sections 8500–8530, not consecutive) filed 12–3–81; effective thirtieth day thereafter (Register 81, No. 49). For prior history, see Register 74, No. 25.

Chapter 3. Conflict of Interest Code

§ 8600. General Provisions.

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, Title 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Department of Boating and Waterways.

Pursuant to Title 2 of the California Code of Regulations Section 18730, designated employees shall file statements of economic interests with their agencies. Upon receipt of the statements of the Director and Commissioners, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New Chapter 3, Articles 1–5 (Sections 8600–8650, not consecutive) filed 5–13–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–17–77 (Register 77, No. 20).
2. Repealer of Chapter 3 (Articles 1–5, Sections 8600–8650, not consecutive) and new Chapter 3 (Section 8600 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment of section and Appendix filed 2–11–2003; operative 3–13–2003. Submitted to OAL for printing only (Register 2003, No. 7).

Appendix

Designated Employees/Division	*Disclosure Category*
Executive Office	
Department Director	1
Deputy Director	1
Staff Counsel	2
Legislation, Public Information & Regulations	
Senior Boating Administrator/Division Chief	2
Associate Governmental Program Analyst	2
Boating Facilities Division	
CEA/Division Chief	2
Supervising Civil Engineer	2
Senior Engineering Geologist	2
Oceanographer	2
Staff Services Manager	2
Aquatic Pest Control Program Manager	2
Aquatic Pest Control Assistant Program Manager	2
Senior Civil Engineer	2
Associate Civil Engineer	2
Civil Engineering Associate	2
Assistant Civil Engineer	2
Junior Civil Engineer	2
Boating Facilities Manager II	2
Project Managers	2
Associate Landscape Architect	2
Associate Governmental Program Analyst	2
Staff Services Analyst	2
Environmental Scientist	2
Administrative Services Division	
Staff Services Manager/Division Chief	2
Business Services Officer	2
Staff Information Systems Analyst (Supervisor)	2
Associate Information Systems Analyst (Specialist)	2
Assistant Information Systems Analyst	2
Boating Operations Division	
Staff Services Manager/Division Chief	2
Staff Services Manager	2
Designated Employees/Division	*Disclosure Category*
Associate Governmental Program Analyst	2
Staff Services Analyst	2
Program Managers	2
Department Wide	
Consultants*	1
Members of the Boating and Waterways Commission	2

Disclosure Categories

1. Every person in Category 1 must disclose all investments, interests in real property, income and his or her status as a director, officer, partner, trustee, employee or holder of any position of management in any business entity.

2. Every person in Category 2 must disclose investments, interests in real property, income and his or her status as a director, officer, partner, trustee, employee or holder of any position of management in a business entity, if the business entity, source of income or real property is:

(a) subject to or foreseeably may be subject to any laws of the State of California relating to the control of recreational boating, or subject to any rules or regulations promulgated by the Department of Boating and Waterways;

(b) one which has contracted, or in the future foreseeably may contract with the Department to provide services, supplies, materials, machinery, instrumentation, or equipment to the Department;

(c) associated with the manufacture, distribution, sale, repair, or advertisement of recreational boating, marine equipment and supplies or other related products;

(d) regularly engaged in the business of environmental impact reports or environmental impact statements; or

(e) an interest in real property in or contiguous to recreational boating facilities.

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*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadcast disclosure category in the code subject to the following limitation:

The director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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Division 5. San Francisco Bay Conservation and Development Commission

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Division 5. San Francisco Bay Conservation and Development Commission

Chapter 1. General Provisions

Article 1. Interpretation of Regulations

§ 10110. Purpose of Regulations.

These regulations supplement and interpret the McAteer–Petris Act (Sections 66600 through 66661 of the Government Code), the Suisun Marsh Preservation Act (Sections 29000 through 29610 of the Public Resources Code), the San Francisco Bay Conservation and Development Commission's San Francisco Bay Plan, the San Francisco Bay Conservation and Development Commission's Suisun Marsh Protection Plan, the Coastal Zone Management Act of 1972, as amended (16 U.S.C. Sections 1451 through 1464), the California Environmental Quality Act (Sections 21000 through 21176 of the Public Resources Code), and the act creating the State Coastal Conservancy (Division 21 of the Public Resources Code), as all of them may be amended from time to time. No attempt has been made to reproduce in these regulations the definitions, policies, and other provisions found in the Acts and in the Plans. Therefore, these regulations should be read together with the Acts and the Plans.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Title 7.2, Government Code; Divisions 13, 19 and 21, Public Resources Code; San Francisco Bay Plan; Suisun Marsh Protection Plan; and 16 U.S.C. Sections 1451–1464(a).

HISTORY

1. New Division 5 (§§ 10110 through 10836, not consecutive) filed 11–10–70; effective thirtieth day thereafter (Register 70, No. 46).
2. Amendment filed 11–28–80; effective thirtieth day thereafter (Register 80, No. 48).
3. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10111. Explanation of References.

References in these regulations to "Chapter____," "Subchapter____," "Article____," "Section____," and "Paragraph (____)" denote subdivisions of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Title 7.2, Government Code; and Divisions 13, 19 and 21, Public Resources Code.

HISTORY

1. Amendment filed 11–28–80; effective thirtieth day thereafter (Register 80, No. 48).
2. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Article 2. Definitions

§ 10120. Emergency.

"Emergency," as used in the McAteer–Petris Act, the Suisun Marsh Preservation Act, and in these regulations other than in the context of calling an emergency meeting means a situation that poses an immediate danger to life, health, property, or essential public services and that demands action by the Commission more quickly than the Commission's normal permit procedures would allow. A situation that poses an immediate danger to life, health, property, or essential public services may include, for example, an accident, sabotage, vandalism, fire, flood, earthquake, or soil or geologic movements.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 11125.5, Government Code; and Section 29509(a), Public Resources Code.

HISTORY

1. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 9–25–96; operative 10–25–96 (Register 96, No. 39).

§ 10121. San Francisco Bay and Certain Waterways Jurisdiction.

(a) These regulations shall refer to the upland boundary of the Commission's jurisdiction over "San Francisco Bay," pursuant to GovernmentCode Section 66610(a) ("San Francisco Bay" jurisdiction), and the upland boundary of the Commission's jurisdiction over those certain waterways listed in Government Code Section 66610(e) ("certain waterways" jurisdiction) as "the shoreline." The shoreline shall be defined as being located at mean high water in those areas other than tidal marsh and at five feet above mean sea level in areas of tidal marsh. Where necessary to distinguish the upland edge of the Commission's San Francisco Bay jurisdiction from the upland edge of the Commission's certain waterways jurisdiction, these regulations refer to the former as "San Francisco Bay shoreline" and the latter as "the certain waterways shoreline."

(b) The Commission's San Francisco Bay and certain waterways jurisdictions include all bodies of water having the nature of open water, however named, including sloughs, harbors, straits, channels, estuaries, bays, marinas, basins, and coves up to the shoreline.

(c) The Commission's San Francisco Bay jurisdiction includes those portions of other waterways, however named, that are in fact parts of San Francisco Bay rather than tributaries and that are shown as parts of San Francisco Bay on the San Francisco Bay Plan Maps, including but not limited to:

Map No.	*Name and Location*
4	Castro Creek (Richmond) adjacent to the remaining marsh
6	Mt. Eden Creek (Hayward), passing through the remaining marsh
6	Alameda Creek Flood Control Channel (Hayward), passing through the remaining marsh
7	Coyote Creek, bayward of the railroad crossing (Fremont and Santa Clara County)
7	San Francisquito Creek (Palo Alto), bayward of the inland boundary of the Faber Tract
6	Redwood Creek (Redwood City), bayward from the Redwood City Municipal Yacht Harbor
5	Islais Creek (San Francisco)
4	Corte Madera Creek, bayward of the railroad crossing (Marin County)
1 & 4	Galinas Creek (Marin County), bayward of the junction of the North and South Forks
1	Novato Creek (Marin County), bayward of the eastern high tension line as it existed on September 17, 1965
1	Petaluma River, bayward of the Highway 37 bridge (Marin and Sonoma Counties)
1	Tolay Creek, bayward of the northernmost point of Lower Tubbs Island near the Island Land Club (Sonoma County)
1	Sonoma Creek, bayward of the Highway 37 bridge (Sonoma and Solano Counties)
2	Napa River, bayward of the Highway 37 bridge (Vallejo).

(d) The Commission's San Francisco Bay jurisdiction includes Spoonbill Creek and the unnamed cut running northward just east of Collinsville, Solano County, but not including water areas lying generally southward of a line drawn from Simmons Point northeasterly along the southern shoreline of Chipps Island, Van Sickle Island, and the mainland, to the mouth of Marshall Cut.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66610(a), Government Code; *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal.App. 4th 1050, 29 Cal. Rptr. 2d 518.

HISTORY

1. Repealer of former Section 10121, and renumbering and amendment of Section 10126 to Section 10121 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.
2. Amendment of section heading, section and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).
3. Change without regulatory effect amending section filed 3–1–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 9).

§ 10122. Slough.

"Slough" means:

(a) a stream of water labelled as a slough on the U.S. Geological Survey maps current as of September 1, 1968; or

(b) any other stream of water that passes through a tidal marsh or mudflat or a former tidal marsh or mudflat extending up to the shoreline, except those certain waterways covered by the provisions of subdivision (e)

of Government Code Section 66610 and those waterways enumerated in Section 10121(b).

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66610(a); and *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal.App. 4th 1050, 29 Cal. Rptr. 2d 518.

HISTORY

1. Repealer of former Section 10122, and renumbering and amendment of Section 10131 to Section 10122 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 44.
2. Amendment of subsection (b) and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).

§ 10123. Areas Excluded from Commission Jurisdiction.

(a) An area that would fall within the Commission's jurisdiction only as the result of the natural destruction of a man–made works, such as a dike, levee, or other similar tidal control structure, shall remain excluded from the Commission's jurisdiction for a period ending one year after the Commission has given an affected property owner written notice of the potential extension of the Commission's jurisdiction as a result of the destruction, or for such longer period as may be specified by Commission resolution based upon its finding that repairs of the destruction could not physically be completed within one year after receipt of written notice of the potential extension of the Commission's jurisdiction; and

(b) An area that would fall within the Commission's "San Francisco Bay" jurisdiction or within its "certain waterways" jurisdiction shall be and remain excluded from the Commission's jurisdiction if it could, on and at all times subsequent to September 17, 1965, have been removed from being touched by tidal waters by simply closing a functioning tidal gate.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66610(a) and (e), Government Code; and *Blumenfeld v. San Francisco Bay Conservation and Development Commission*, 43 Cal. App. 3d 50 (1974); and *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal.App. 4th 1050, 29 Cal. Rptr. 2d 518.

HISTORY

1. Repealer of former Section 10123, and renumbering and amendment of Section 10132 to Section 10123 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of section heading, section and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).

§ 10124. Coastal Management Program for San Francisco Bay.

"Coastal Management Program for San Francisco Bay" means the documents for the San Francisco Bay segment of the California coastal zone approved as consistent with the Coastal Zone Management Act of 1972, as amended, by the Office of Coastal Zone Management, United States National Oceanic and Atmospheric Administration. It consists of a narrative portion that describes the Bay segment of the California Coastal Zone Management Program and BCDC compliance with the requirements established by the Office of Ocean and Coastal Resource Management under Section 306 of the Coastal Zone Management Act. It also contains appendices that include all relevant statutes, plans, and regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: The Coastal Zone Management Act, as amended, 16 USC Sections 1451–1464; and Section 29205, Public Resources Code.

HISTORY

1. Repealer of former Section 10124, and renumbering and amendment of Section 10128 to Section 10124 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.

§ 10125. Substantial Change.

"Substantial change in use" includes any one of the following:

(a) as to any "salt pond" or "managed wetland," any change in use including abandonment which, for the purposes of this section, shall include any draining of water except temporary draining for a short period of time in accordance with routine operating practice; or

(b) as to other areas within the Commission's McAteer–Petris Act jurisdiction, any construction, reconstruction, alteration, or other activity, whether or not involving a structure, if the activity either:

(1) has an estimated cost of $250,000 or more;

(2) involves a change in the general category of use of a structure or of land, i.e., agriculture, residential, commercial, office, industrial, recreational, vacant non–use, etc.;

(3) involves a substantial change in the intensity of use;

(4) adversely affects existing public access or future public access as shown on any Commission permit, the San Francisco Bay Plan, any Commission special area plan, or any other Commission planning document; or

(5) is any subdivision of land pursuant to the Subdivision Map Act (Government Code Section 66410 et seq.) or other division of land, including a lot split, where the subdivision or other division of land will substantially affect either present or future public access to or along the shoreline or substantially affect either the present or future suitability of a water–oriented priority land use site for that priority use, but not a subdivision or other division of land that is brought about in connection with the acquisition of an interest in such land by a public agency for wildlife habitat, marsh restoration, public recreation, or public access.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66632(a) and 66654, Government Code.

HISTORY

1. Renumbering and amendment of Section 10133 to Section 10125 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of subsection (b)(1) and new subsection (b)(3) and subsection renumbering filed 9–19–96; operative 10–19–96 (Register 96, No. 38).
3. Amendment of subsection (b)(4) filed 5–1–97; operative 5–31–97 (Register 97, No. 18).

§ 10126. Members of the Commission.

"Members of the Commission," "members," and "Commissioner," means any Commissioner appointed pursuant to Section 66620 of the Government Code and any Alternate appointed pursuant to Section 66622 of the Government Code, provided that a Commissioner and his or her Alternate may not both constitute the two members of the Commission appealing an action pursuant to Section 29522 of the Public Resources Code.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29522, Public Resources Code; and Section 1774, Government Code.

HISTORY

1. Renumbering and amendment of former Section 10126 to Section 10121, and renumbering and amendment of Section 10138 to Section 10126 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 44.

§ 10127. Houseboat.

A "houseboat" is a boat that is used for a residential or other nonwater–oriented purpose and that is not capable of being used for active navigation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29008, Public Resources Code; and the San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan, Recreation (As amended March 20, 1986, pursuant to Government Code Section 66652).

HISTORY

1. New section filed 8–6–87; operative 9–5–87 (Register 87, No. 34).
2. Editorial renumbering of Section 10128 "Houseboat" to Section 10127 (Register 87, No. 47).

§ 10128. Live–Aboard Boat.

A "live–aboard boat" is a boat that is not a transient boat, that is capable of being used for active self–propelled navigation, and that is occupied as a residence as that term is defined in California Government Code Section 244.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29008, Public Resources Code; and the San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan, Other Uses of the Bay and Shoreline (As amended March 20, 1986, pursuant to Government Code Section 66652).

HISTORY

1. New section filed 8–6–87; operative 9–5–87 (Register 87, No. 34).
2. Editorial renumbering of Section 10127 "Live–Aboard Boat" to Section 10128 (Register 87, No. 47).

§ 10129. Line of Highest Tidal Action.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66610(a) and 66610(e), Government Code.

HISTORY

1. New section filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

[The next page is 505.]

2. Repealer filed 5–24–96; operative 6–23–96 (Register 96, No. 21).

Article 3. Boundary and Jurisdictional Questions

§ 10130. Exclusion of Extraction of Materials for Sampling.

The term "extraction of materials worth more than $20" as used in the McAteer–Petris Act and the term "extraction of material" as used in the Suisun Marsh Preservation Act shall exclude the extraction of any material or materials for environmental or seismic testing purposes only.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66604 and 66632(a), Government Code; and Sections 29114 and 29508, Public Resources Code.

HISTORY

1. Repealer of former Section 10130, and renumbering and amendment of Section 10180 to Section 10130 filed 5–18–87; operative 6–17–87 (Register 87, No. 30.) For prior history, see Registers 80, No. 48 and 73, No. 16.
2. Renumbering of former section 10130 to new section 10131 and new section 10130 filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 10131. McAteer–Petris Act Jurisdiction and Bay Plan.

The information shown on the San Francisco Bay Plan Maps is intended to portray the actual location of land and water, salt ponds, managed wetlands, certain hills, marshes, and man–made features; however, the maps do not establish the extent of the Commission's jurisdiction. In case of any discrepancy between the portrayal of a feature on a Bay Plan Map and the descriptions in Government Code Section 66610 or these regulations, the provisions of Government Code Section 66610 and these regulations shall prevail.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66602, 66610 and 66653, Government Code; and San Francisco Bay Plan.

HISTORY

1. Renumbering and amendment of former Section 10131 to Section 10122, and renumbering and amendment of Section 10181 to Section 10131 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 75, No. 51.
2. Renumbering of former section 10131 to new section 10132 and renumbering of former section 10130 to new section 10131 filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 10132. Exclusion of Larkspur and Greenbrae Boardwalk Areas from McAteer–Petris Act Jurisdiction.

"Areas commonly known as the Larkspur and Greenbrae Boardwalks," means:

(a) within the City of Larkspur, any area, excepting certain sloughs, situated within the area described in the "Notice of Non–Jurisdiction of the BCDC—Larkspur Boardwalk" appearing as Appendix A to these regulations and filed by the Executive Director with the County of Marin; and

(b) within the County of Marin, any area, excepting certain sloughs, situated within the area described in the "Notice of Non–Jurisdiction of the BCDC—Greenbrae Boardwalk" appearing as Appendix B to these regulations and filed by the Executive Director with the County of Marin.

NOTE: Authority cited: Sections 66610 and 66632(f), Government Code. Reference: Section 66610(e), Government Code.

HISTORY

1. Renumbering amendment of former Section 10132 to Section 10123, and new Section 10132 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 10132 to new section 10133 and renumbering of former section 10131 to new section 10132 filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 10133. Determination of Shoreline and Map Boundaries.

(a) Upon written request, the Commission's staff will furnish a description in words of the Commission's jurisdiction. Upon written request and upon submission by any person of a map at an appropriate scale and showing sufficient topographic data, the Commission's staff will indicate upon such map or a copy thereof the location of the Commission's jurisdiction or of any particular boundary in a particular area represented by one or more of the San Francisco Bay Plan Maps.

(b) Upon written request from any person who has obtained a map or description as provided in the preceding paragraph, the Commission shall by resolution determine by map or in words the location of the Commission's jurisdiction.

(c) These maps or descriptions in words need not be based upon surveys performed for the Commission, but may be based on any reliable sources available.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66602, 66610 and 66653, Government Code; and San Francisco Bay Plan.

HISTORY

1. Renumbering and amendment of former section 10133 to section 10125, and new section 10133 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of subsection (a)(3) filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Amendment of subsection (a)(4) and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).
4. Renumbering of former section 10133 to new section 10134 and renumbering of former section 10132 to new section 10133 filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 10134. Determination of Permit Requirements for Subdivisions.

(a) Within 15 days of receipt of a written request, the Executive Director shall determine whether a proposed subdivision or other division of land constitutes a substantial change in use requiring a permit; provided that the request is accompanied by the following information:

(1) the name and address of all current owners of the property;

(2) the name and address of the person making the request;

(3) proof that the person making the request has sufficient legal interest in the property as provided in Appendix F or is an affected local government;

(4) an accurate map at a scale reasonably sufficient to evaluate the project and that shows (A) the existing and proposed parcel lines; (B) the topography of the site; (C) the shoreline and the upland edge of the Commission's 100–foot shoreline band jurisdiction; (D) existing structures, uses, and vegetation on the site; and (E) public streets in the vicinity of the property.

(b) A person submitting a request pursuant to paragraph (a) may appeal the decision of the Executive Director to the Commission, which shall by resolution determine whether the request was properly submitted and whether the proposed subdivision or other division of land constitutes a substantial change in use. The appeal shall be in writing and shall contain the reasons for disagreement with the decision of the Executive Director.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66632, Government Code; *and Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal.App. 4th 1050, 29 Cal. Rptr. 2d 518.

HISTORY

1. Renumbering of former section 10133 to new section 10134 filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

Chapter 2. The Commission, the Staff, and the Advisory Review Boards

Article 1. Regular Meetings

§ 10210. Date and Time.

The Commission shall ordinarily hold regular meetings on the first and third Thursday of each month. The meetings shall begin at an hour set by resolution of the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer of former Section 10210, and renumbering and amendment of Section 10230 to Section 10210 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10211. Changes.

The Chair may change the starting time of any meeting if he or she expects the meeting to be unusually long or if it conflicts with other meetings. The Chair may also cancel or reschedule a regularly scheduled meeting to the preceding day or the following day if it conflicts with a holiday or if a quorum cannot be expected on the scheduled day.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10231 to new Section 10211 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10212. Notice of Changes.

Any changes in a regularly scheduled meeting time may be made by giving notice thereof as provided in Section 10213 or as provided in Section 10231.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code.

HISTORY

1. Renumbering and amendment of Section 10233 to new Section 10212 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10213. Meeting Notice.

Written notice of the time and place of a regularly scheduled meeting and a preliminary agenda shall be mailed by first class not less than ten (10) working days before the meeting. If an interruption in regular mail service occurs, alternative notice may be given. Such alternative notice shall consist of telephoning each Commissioner and each Alternate and publishing a notice of the time and place of the meeting and a summary of the preliminary agenda in a newspaper of general circulation not less than ten (10) working days before the meeting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code.

HISTORY

1. Renumbering and amendment of Section 10240 to new Section 10213 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10214. Who Shall Receive Notice.

The notice shall be mailed to Commission members, to all parties to the proceedings on the agenda, to interested organizations and individuals, to owners and residents of nearby property identified by the applicant pursuant to Appendix D item 20, to any person who requests the notice in writing, and to all agencies that have jurisdiction by law with respect to any proposed activity that is listed in the notice. The Executive Director may require each person requesting the notice to provide the necessary number of self–addressed, stamped, four–inch by nine and one–half inch envelopes for the purpose of mailing the notice.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code; and Section 21080.5(d)(2)(C), Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10241 to new section 10214 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Amendment of section and NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

Article 2. Special Meetings

§ 10220. Time and How Called.

A special meeting may be called for any day during normal working hours by resolution of the Commission, by written petition of a majority of the full Commission, or by written call of the Chair.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer of former Section 10220, and renumbering and amendment of Section 10250 to Section 10220 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

§ 10221. Notice.

Notice of any special meeting shall be given as provided in Section 10213.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125, Government Code.

HISTORY

1. Repealer of former Section 10221, and renumbering and amendment of Section 10251 to Section 10221 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

Article 3. Emergency Meetings

§ 10230. Time and Reason For.

The Chair may call an emergency meeting for any day and time if Commission action is or may be needed in a situation that poses danger to life, health, or property.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125.5, Government Code.

HISTORY

1. Renumbering and amendment of former Section 10230 to Section 10210, and renumbering and amendment of Section 10260 to Section 10230 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

§ 10231. Notice.

Members of the Commission shall be notified of an emergency meeting at least thirty–six (36) hours prior to the meeting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125.5, Government Code.

HISTORY

1. Renumbering and amendment of former Section 10231 to Section 10211, and renumbering and amendment of Section 10261 to Section 10231 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

§ 10232. Prerequisites for Commission Action.

The Commission shall not vote on any matter at any emergency meeting unless it first determines by a vote of three–fourths of the members present that the matter may involve danger to life, health, or property and may need Commission action to avoid or mitigate the danger.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code.

HISTORY

1. Repealer of former Section 10232, and renumbering and amendment of Section 10262 to Section 10232 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

Article 4. Meetings—Quorum and Procedures

§ 10240. Quorum.

A quorum for all Commission meetings shall be fourteen (14) members, of whom thirteen (13) must be non–federal representatives. The Commission shall take no action in the absence of a quorum except that a lesser number of members may adjourn a meeting, may act as a committee to continue a public hearing, and may act as a committee of the Commission for such purposes as the Commission or Chair specified in appointing the committee.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10240 to Section 10213, and renumbering and amendment of Section 10270 to Section 10240 filed

5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

§ 10241. Voting—Number Required to Authorize Action.

Except as otherwise provided in Title 7.2 of the Government Code, in Sections 29000 through 29610 of the Public Resources Code, or in these regulations, actions of the Commission, including passage of resolutions not subject to special provisions, shall be by vote of a majority of the members present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Title 7.2, Government Code; and Division 19, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10241 to Section 10214, and renumbering and amendment of Section 10271 to Section 10241 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10242. Procedures—Robert's Rules of Order.

The Commission shall follow Robert's Rules of Order unless the rules conflict with Title 7.2 of the Government Code, Sections 29000 through 29610 of the Public Resources Code, or these regulations. The appropriate code section or regulation will govern if such a conflict exists.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10272 to new Section 10242 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10243. Agenda.

(a) The Executive Director shall set the agenda for regular meetings.

(b) The Chair may alter the sequence of the agenda for any particular meeting if he or she believes such change is desirable.

(c) The Executive Director or the Chair may set specific times for the consideration of particular items.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10273 to new Section 10243 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10244. Recording of Meetings.

Commission meetings shall be recorded electronically unless equipment failure prevents this. The Commission staff shall retain each recording for at least one year and shall make it reasonably available for replaying at the Commission's offices.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10275 to new Section 10244 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10245. Minutes of Meetings.

(a) The Commission shall keep full and accurate minutes of its meetings and make them available to the public.

(b) The Executive Director and the Chair at a particular meeting shall sign the minutes.

(c) Signed minutes shall be the original evidence of actions taken by the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10276 to new Section 10245 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10246. Public Comment Period.

(a) At each Commission meeting, the Commission shall provide the public with an opportunity to address the Commission on any matter on which the Commission has not already held a public hearing and which is not scheduled for a public hearing during the meeting.

(b) The Commission may provide the public the opportunity required by subdivision (a) either prior to or as part of Commission consideration of the matter on which comments would be offered.

(c) Speakers shall be heard in the order in which they sign up and shall generally be limited to three minutes each. The total time for public comment shall generally be limited to a total of fifteen (15) minutes.

(d) The Commission may provide more time to each speaker and may extend the total time available for public comment beyond fifteen (15) minutes if the Commission or the Chair believes that such an extension is necessary to allow a reasonable opportunity for all members of the public who want to testify.

(e) Members of the public who believe that they need additional opportunity to communicate with the Commission may present written material to the Commission at any time subject to such deadlines as the Commission or Chair may impose concerning matters for which specific Commission action may be required in the future.

(f) The Executive Director shall insure that copies of all written materials received prior to any deadline established by the Commission or the Chair are provided to the Commission in a timely manner.

(g) The Commission shall not take any action on any matter raised during the public comment period other than to schedule the matter for a future meeting agenda or to refer the matter to the staff for investigation unless the matter is already scheduled for action by the Commission later in the meeting.

NOTE: Authority cited: Sections 11125.7 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 11125.7, Government Code.

HISTORY

1. New section filed 2–27–98; operative 3–29–98 (Register 98, No. 9).

Article 5. Officers

§ 10250. Duties of the Chair.

(a) The Chair shall preside at all meetings of the Commission, shall execute documents for the Commission requiring such execution and shall perform such other duties as the Commission provides by resolution.

(b) The Chair shall, in collaboration with and with the concurrence of the Commission, appoint the members and chair persons of the Design Review Board, the Engineering Criteria Review Board, the Citizen's Advisory Committee, and representatives of the Commission to boards, committees, and other commissions as may be necessary.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10250 to Section 10220, and renumbering and amendment of Section 10281 to Section 10250 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10251. Duties of Vice Chair.

In the absence of the Chair, the Vice Chair shall perform those duties of the Chair that cannot reasonably await the return of the Chair.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201, Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10251 to Section 10221, and renumbering and amendment of Section 10282 to Section 10251 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10252. Acting Chair.

The Chair or, in the absence of the Chair, the Vice Chair or, in the absence of the Chair and the Vice Chair, a majority of the Commission shall

appoint an Acting Chair when neither the Chair nor Vice Chair may be available to perform the duties of the Chair.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Article 6. Staff

§ 10260. Executive Director—Appointment and Term.

The Commission shall appoint an Executive Director to serve at the pleasure of the majority of the members of the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66635, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10260 to Section 10230, and renumbering and amendment of Section 10290 to Section 10260 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10261. Executive Director—Duties and Delegation.

(a) The Executive Director shall administer the affairs of the Commission in accordance with the direction and policies of the Commission. He or she shall also appoint such other employees as may be necessary to carry out the functions of the Commission. Appointments of staff members shall be presumed to be approved by the Commission unless the Commission objects by a majority vote at the meeting when the Executive Director announces the appointment.

(b) Except as specifically provided by Commission resolution, the Executive Director may delegate the performance of any of his or her functions, including those specifically prescribed by the McAteer–Petris Act, the Suisun Marsh Preservation Act, or by these regulations, but such delegation shall not affect his or her responsibility to see that the directions and policies of the Commission are carried out fully and faithfully.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66635, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10261 to Section 10231, and renumbering and amendment of Section 10291 to Section 10261 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10262. Acting Executive Director.

(a) The Executive Director shall designate a member of the staff to serve as acting Executive Director while the Executive Director is absent or unable to perform his or her regular duties.

(b) If the Executive Director is unable to perform his or her regular duties and has not designated an acting Executive Director, the Chair may perform those duties or may designate an acting Executive Director.

(c) The acting Executive Director shall have the same powers, duties, and responsibilities as the Executive Director.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66635, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10262 to Section 10232, and renumbering and amendment of Section 10292 to Section 10262 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 7. Advisory Boards

§ 10270. Membership and Function of Design Review Board.

(a) The Design Review Board shall consist of seven (7) members of the design professions, including at least one (1) architect, one (1) landscape architect, and one (1) engineer.

(b) The Board shall advise the Commission and the staff on the appearance and design of projects for which a Commission permit or consistency determination is needed, particularly as the project affects public access to the Bay and shoreline.

(c) Four members shall constitute a quorum for Board meetings and shall be the minimum necessary for the Board to consider any matter.

(d) The Commission may designate up to ten former Board members to act as a pool of alternates to substitute for current Board members who cannot participate in any Board meeting or the consideration of any specific matter at any Board meeting.

(e) When fewer than all seven members of the Board will be available to participate in the Board's consideration of a matter, the Executive Director may designate one or more alternate Board members selected from the pool established by the Commission pursuant to paragraph (d) to substitute for the Board member or members who cannot participate in the Board's consideration of and action on that matter so long as the total number of Board members that considers a matter does not exceed seven.

(f) When designating an alternate Board member pursuant to paragraph (e), the Executive Director shall select an individual in a professional discipline and with professional experience as mush as possible like those of the Board member who cannot participate in the Board's consideration of the particular matter.

(g) Alternate Board members designated pursuant to paragraphs (e) and (f) shall have the same powers and authority to participate in the Board's consideration and action on any matter as a regular Board member.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66635, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10270 to Section 10240, and renumbering and amendment of Section 10295 to Section 10270 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 12–30–98; operative 1–29–99 (Register 99, No. 1).

§ 10271. Membership and Function of Engineering Criteria Review Board.

The Engineering Criteria Review Board shall consist of not more than eleven (11) members, including at least one (1) geologist, one (1) civil engineer specializing in soils, one (1) structural engineer, and one (1) architect. The Board shall advise the Commission on problems relating to the safety of fills and of structures on fills.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66633(b), Government Code; Section 29520(a), Public Resources Code; and San Francisco Bay Plan.

HISTORY

1. Renumbering and amendment of former Section 10271 to Section 10241, and renumbering and amendment of Section 10298 to Section 10271 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 8. Ex Parte Communications

§ 10280. Purpose.

Fairness and due process of law are essential elements of responsible government. Public confidence in government is highest when an agency conducts its adjudicatory business openly and impartially. This regulation supplements and helps explain minimum legal requirements concerning the disclosure of communications that occur outside of the normal hearing process and would therefore not be part of the administrative record when the Commission acts on permit applications and on enforcement cases and takes other adjudicatory actions. However, Commission members can, and are encouraged to, disclose more information relative to any communication that occurs outside of the public record to ensure that all Commission members can make informed decisions.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 11430.20, 11430.30, 11430.40, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New article 8 (sections 10280–10289) and section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10281. Definition of an Ex Parte Communication.

An ex parte communication is any oral or written communication regarding a pending adjudicatory proceeding between a member of the Commission and either any party to the pending Commission adjudicatory proceeding or a member of the public that does not occur in a Commission public hearing, Commission workshop, or other official Commission proceeding or on the official Commission record for the proceeding.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11405.20, 11405.30, 11405.40, 11405.50, 11405.60, 11405.70, 11405.80, 11410.10, 11410.20, 11430.10, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10282. Definitions of a Quasi–Judicial Proceeding and of a Quasi–Legislative Proceeding.

All Commission actions are considered to be either adjudicatory or quasi–legislative. An adjudicatory action by the Commission affects specific rights or interests of an individual or business entity based on specific facts, such as the granting of a permit, the issuance of a cease and desist order, the issuance of a report to the California Energy Commission pursuant to California Government Code Section 66645(d), or Commission review of a federal consistency determination or certification. A quasi–legislative action generally applies to a given class or group of individuals or entities and usually takes the form of a Commission plan amendment, policy, or regulation.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 66632, 66638 and 66645(d), Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10283. General Policy and Disclosure of Ex Parte Communications.

(a) Ex parte communications are prohibited in adjudicatory actions. However, if such a prohibited communication occurs, any Commission member who receives an ex parte communication concerning any adjudicatory matter pending before the Commission shall disclose the content of the communication on the record.

(b) The disclosure shall occur prior to or at the same time as the Commission considers the matter that is the subject of the ex parte communication.

(c) Compliance with this disclosure requirement regarding the receipt of an ex parte communication in written form shall be accomplished by sending a copy of the written communication and any response to the communication to the Commission Executive Director as soon as practicable.

(d) Compliance with this disclosure requirement regarding the receipt of an ex parte communication orally shall be accomplished by submitting a memorandum to the Executive Director for inclusion into the record of the matter that is the subject of the ex parte communication.

(e) The memorandum required by paragraph (d) shall include the substance of the communication, any response by the recipient Commission member, and the identity of each person from whom the recipient Commission member received the communication.

(f) This policy shall not apply to quasi–legislative matters such as the adoption of or the amendment to a Commission plan, the adoption of or the amendment of a Commission regulation, and Commission comments on proposed or pending legislation.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections11430.10, 11430.40, 66632, and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10284. Permissible Ex Parte Communications.

The following types of ex parte communications are not prohibited by these regulations and do not require any disclosure into the record:

(a) communications specifically authorized by statute and required for the disposition of an adjudicatory matter;

(b) the communication involves a matter of procedure or practice that is not in controversy;

(c) the communication is from an employee or representative of BCDC who has not served as an investigator, prosecutor, or advocate during the proceeding or pre–adjudicative state and whose purpose is to assist or advise the Commission;

(d) the communication is from an employee or representative of BCDC and concerns a settlement proposal advocated by the employee or representative; and

(e) the communication is from an employee or representative of BCDC and involves a non–prosecutorial proceeding.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.20, 11430.30, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10285. When the Policy Applies.

(a) The policy established by Sections 10283 and 10284 shall commence to apply for a permit application or a federal consistency determination or certification when an applicant first submits an application, a consistency determination, or a consistency certification to the Commission.

(b) The policy shall commence to apply for a Commission enforcement action when the Commission staff mails either a violation report or a complaint for the imposition of administrative civil penalties.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10286. Notification of Parties and Interested Persons.

(a) As soon as is practicable, the Executive Director shall notify in writing all parties to a proceeding and all persons interested in the proceeding that a Commissioner has received an impermissible ex parte communication.

(b) If the communication was received orally, the Executive Director shall include a copy of the memorandum and any response to the communication required by Sections 10283(d) and (e) with the written notification.

(c) If the communication was received in writing, the Executive Director shall include a copy of the written communication with the written notification.

(d) In either case, the notice shall also state that the party or person being notified must request an opportunity to address the Commission concerning the communication within 10 days of receiving the notice or the party or person shall waive the opportunity to address the Commission.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY
1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10287. Party Opportunity to Respond to an Ex Parte Communication.

If a party requests an opportunity to address the Commission concerning the communication within 10 days as required by Section 10286, the Commission shall grant the request and may allow the requesting party to present rebuttal evidence concerning the subject of the ex parte communication.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY

1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10288. Ex Parte Communications After the Close of the Public Hearing and After the End of the Time Period for Receipt of Written Communications; Public Comments and Responses.

(a) If an oral ex parte communication occurs after the close of the public hearing or a written ex parte communication occurs after the deadline for submitting written comments, the ex parte communication shall be disclosed as required by Section 10283.

(b) The Commission Chair or the Commission may determine that the communication contains new or different information pertinent to the decision being made. The Commission Chair or the Commission may also determine that reopening the public hearing is therefore necessary to protect the integrity of the decision–making process.

(c) If the Commission chair or the Commission makes both such determinations, it shall circulate the communication to the entire Commission and may reopen the public hearing to allow the public sufficient opportunity to comment on and to rebut the information contained in the communication unless a legal deadline for voting prevents reopening the hearing.

(d) If necessary, either the deadline for Commission voting shall be extended or the Commission shall deny the application because of the public's inability to comment on the new or different information.

(e) If a conflict occurs between this section and Commission Regulation Section 10430, this section shall take precedence.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.50, 66632 and 66638, Government Code; Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY

1. New section filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 10289. Field Trips.

(a) A Commission member may take an individual field trip to the site of a proposed project or a pending enforcement action so long as the Commission member discloses the fact of the field trip and the substance of all that he or she observed to the Commission as soon as practicable afterwards.

(b) The Commission's policy on ex parte communications shall apply to any communication that involves a Commission member that occurs during a field trip either by an individual Commission member or by the Commission.

NOTE: Authority cited: Sections 11400.20 and 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11430.10, 11430.20, 11430.30, 11430.40, 11430.50, 66632 and 66638, Government Code; and Sections 29520, 29524 and 29601, Public Resources Code.

HISTORY

1. New section filed 12–27–2004: operative 1–26–2005 (Register 2004, No. 53).

Chapter 3. Major Permits Procedures: Applications, Amendments to Applications, and Application Summaries

Subchapter 1. Definitions

Article 1. Definitions

§ 10300. Major Permits.

A major permit is any Commission permit other than an administrative permit, an emergency permit, a regionwide permit or an abbreviated regionwide permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

Subchapter 2. Applications for a Major Permit

Article 1. Application Requirements

§ 10310. Summary of Prerequisites for Filing a Major Permit Application.

The Commission shall file a major permit application pursuant to California Government Code section 66632 only when the applicant has submitted all of the following materials to the Executive Director:

(a) one (1) original and six (6) copies of a fully completed and properly executed application form, which these regulations contain as Appendix D;

(b) an executed Certificate of Posting of "Notice of Pending BCDC Application" form, which these regulations contain as Appendix E;

(c) exhibits to the application form, as described in Appendix F and Section 10625;

(d) a check or money order in the amount of all applicable filing fees in compliance with Appendix M;

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(e) for all projects that constitute a "surface mining operation" under the Surface Mining and Reclamation Act and that are not exempt under Cal. Public Resources Code sections 2714 or 2776, a reclamation plan that complies with Cal. Public Resources Code section 2772;

(f) evidence that:

(1) all local discretionary approvals (i.e., all approvals other than ministerial permits such as building permits) have been granted, or

(2) for subdivisions or other land divisions requiring a Commission permit for which final local approval or disapproval has not been granted, a statement that the local government either favors the project, with or without conditions, or does not favor the project.

NOTE: Authority cited: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65940–65942, 66632(f) and 84308, Government Code; Sections 2770, 2774, 21080.5, 21082, 21160 and 29520, Public Resources Code; and the San Francisco Bay Plan.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment of subsections (a), (b), (c) and (f) filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
4. Amendment of subsection (d) filed 11–20–91; operative 12–20–91 (Register 92, No. 8).
5. Amendment of subsection (c) filed 1–26–98; operative 2–25–98 (Register 98, No. 5).
6. Amendment of subsection (a) and NOTE filed 2–2–98; operative 3–4–98 (Register 98, No. 6).

§ 10311. Waiver or Modification of Filing Requirements.

(a) Except as provided in subsection (b), the Executive Director may, at his or her sole discretion, waive or modify any or all of the permit application filing requirements contained in Section 10310, Appendix D, Appendix E, and Appendix F if he or she concludes all of the following: the otherwise required information is not necessary (1) to determine whether the proposed activity would be consistent with all applicable laws and policies, (2) to allow the government agencies specified in Section 10360 to review and comment on the proposed project, and (3) to provide adequate public notice of the project.

(b) The Executive Director may not waive or modify either (1) the requirement that a permit application must obtain all local discretionary governmental approvals pursuant to Government Code Section 66632(b) and Regulation Section 10310(f), (2) the applicable filing fee for the application, or (3) the requirement that the application include all public improvements and public utility facilities necessary or incidental to the proposed project and the names and mailing addresses of all public agencies or public utilities that will have ownership or control of the public improvements and public utility facilities if the permit is granted and the project built.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65940–65942 and 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
4. Amendment of section heading and section filed 1–22–98; operative 2–21–98 (Register 98, No. 4).
5. Amendment filed 2–27–98; operative 3–29–98 (Register 98, No. 9).

§ 10312. Postponement of Filing Requirements.

The Executive Director may, at his or her sole discretion, postpone the time when an applicant must submit any of the information for which the Executive Director can waive submittal under Section 10311 if:

(1) the Executive Director decides that the information is not necessary at the time of filing,

(2) the applicant agrees to provide the information at such time as the Executive Director requests, and

(3) the applicant acknowledges in writing that the Commission may deny the application if the applicant does not provide the information when the Executive Director requests it because the Commission lacks sufficient information to determine whether the application is consistent with all applicable policies.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201, Public Resources Code. Reference: Sections 65944 and 66632, Government Code; and Sections 2714, 2728, 2733, 2735, 2771, 2772, 2773, 2774 and 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
4. Amendment of first paragraph filed 2–27–98; operative 3–29–98 (Register 98, No. 9).

§ 10313. Parcel Map.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29601, Public Resources Code. Reference: Sections 65940–65942 and 66632(d), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Repealer filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10314. List of Affected Property Owners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29601, Public Resources Code. Reference: Sections 65940–65942 and 66632(d), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Repealer filed 4–18–90; operative 5–18–90 (Register 90, No. 18).

§ 10315. Submittal of Design Review Board Materials.

(a) An applicant for a Bay Commission permit for a project that requires review by the Design Review Board shall submit, except as provided in subsection (g) below, all of the following to the Commission staff at least 14 days prior to the schedule Design Review Board meeting at which the Board will review the project:

(1) a description of the proposed project that complies with subsection (b) of this section;

(2) an 8 1/2″ by 11″ vicinity map that complies with Appendix F; and

(3) ten (10) copies, 8 1/2″ by 11″ in size, and one (1) copy, at a scale of either 1″ = 20′, 1″ = 30′, or 1″ = 40′ and which can be read from a distance of 20 feet, of each of the following:

(A) a site plan that complies with subsection (c) of this section,

(B) a public access detail plan that complies with subsection (d) of this section,

(C) one cross section that designates the elevations of and clearly illustrates the relationship between 1. the shoreline, 2. the top of the bank, 3. any existing or proposed public access path, 4. the floor of a representative structure, and 5. the top of a representative building, and

(D) if the public access being proposed for a project contains two or more public access areas that differ substantially in quality or width or distance from the line of highest tidal action, additional cross sections for each such different public access area that provide the information required in subsection 10315(a)(3)(C).

(b) The description of the proposed project shall contain the following information:

(1) proposed uses of the project;

(2) the dimensions, areas, and height of all structures;

(3) the area of the parcel(s) on which the project will be constructed, the area of the parcel(s) that is upland, the area of the parcel(s) that is tideland, and the area of the parcel(s) that is submerged lands;

(4) the length of the shoreline measured along the shoreline;

(5) the area of the project site that is located within the Commission's "shoreline band" jurisdiction pursuant to Govt. Code section 66610(b);

(6) the area of proposed public access;

(7) the status of the project in the local governmental approval process;

(8) the amount of proposed dredging;

(9) the amount of proposed riprap or other shoreline protection; and

(10) the volume of proposed fill in cubic yards and the area of proposed fill in square feet.

(c) The site plan shall show or contain the following information:

(1) the location and dimensions of all proposed solid fill, buildings, bulkheads, piers, docks, decks, pipes, outfalls, and other similar structures;

(2) the location and elevation of all existing and proposed riprap;

(3) the footprints of all existing buildings to be removed (outlined with dashed lines), all existing buildings to remain (outlined with solid lines), and all proposed buildings (outlined with solid lines with interiors shaded);

(4) existing and proposed service areas for delivery, storage, garbage, and other similar uses;

(5) existing and proposed fences, with type of material(s) and height;

(6) existing and proposed on–site driveways, streets, drop–off areas, and parking;

(7) existing and proposed pedestrian circulation, including sidewalks and paths;

(8) existing and proposed public access areas, including paths, plazas, and landscaped areas;

(9) areas of marsh, salt pond, managed wetland, and mudflats;

(10) existing and proposed contours;

(11) all existing and proposed easements across the site;

(12) if a marina is included in the project:

(A) the berthing layout;

(B) the dimensions for docks and ramps and an indication if they are supported by pilings or are floating;

(C) the location and dimensions of the drop–off areas;

(D) the location of all security gates;

(E) the location of all gear storage areas;

(F) the location and dimensions of the harbormaster office;

(G) the location of all restrooms;

(H) the location of all existing and proposed showers;

(I) the location of all existing and proposed gas docks;

(J) the location of all existing and proposed pumpout facilities;

(K) the location of all existing and proposed oily waste disposal facilities;

(L) the location of all existing and proposed launch ramps or hoists;

(M) the location of all existing and proposed small boat trailer parking and storage; and

(N) the location of all existing and proposed guest berthing.

(d) The public access detail plan shall show or contain the following information:

(1) the locations and dimensions of all existing and proposed areas of fill for public access;

(2) the locations, typical widths, and typical elevations of all existing and proposed paths;

(3) the location, dimensions, and elevations of all existing and proposed seating areas;

(4) the location and dimensions of all existing and proposed irrigated landscaped areas (distinguish areas containing either trees, tall shrubs, low shrubs, groundcover, or lawn);

(5) the location and dimensions of all existing and proposed nonirrigated landscaped areas (distinguish areas containing either trees, tall shrubs, low shrubs, groundcover, and lawn);

(6) the location and height of all existing and proposed berms or mounds;

(7) the location and type of all existing and proposed lighting;

(8) the location of all existing and proposed restrooms;

(9) the types of paving materials;

(10) the location and number of spaces of all existing and proposed public parking;

(11) the location of all existing and proposed public access signs;

(12) the location of all connections from existing or proposed public access to the nearest public areas or public sidewalks;

(13) the location and dimensions of all existing and proposed view corridors;

(14) seasonal wind directions;

(15) the location and dimensions of all areas of midday shadow cast by structures on the longest and shortest days of the year; and

(16) dimensions of the minimum, maximum and average widths of the overall public access areas.

(e) The cross section(s) required by subsection 10315(a)(3)(C) and 10315(a)(3)(D), the site plan required by subsections 10315(c), and the public access detail plan required by subsection 10315(d) shall all contain the following information:

(1) a title;

(2) the name and address of the person who prepared the plan;

(3) the date of the plan;

(4) a north arrow;

(5) a scale;

(6) the location and the elevation of the line of highest tidal action;

(7) the location and elevation of the top of the bank;

(8) the location and elevation of the landward limit of the Commission's 100–foot shoreline band jurisdiction;

(9) the location and dimensions of all parcel lines; and

(10) the location of any contiguous parcels owned by an applicant or coapplicant.

(f) All elevations shown on the cross–section(s), the site plan, or the public access detail plan shall be shown in National Geodetic Vertical Datum.

(g) The Executive Director may modify or waive any or all of the project description, site plan, public access plan, elevations, or tidal datum reference point requirements of this section if he or she determines that the information is not necessary for Design Review Board evaluation of the proposed project.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: San Francisco Bay Plan, Public Access, Finding b (page 26), Policy 9 (page 28); and *Littoral Dev. Co. v. San Francisco Bay Conservation and Dev. Comm'n* (1994) 24 Cal.App. 4th 1050, 29 Cal. Rptr. 2d 518.

HISTORY

1. New section filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
2. Amendment of subsection (a)(2) filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Editorial correction of printing error restoring text corrected (Register 91, No. 46).
4. Amendment of subsections (a), (a)(3)(C), (b)(4)–(5), (d)(12), and (e)–(e)(9) and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).
5. Amendment of subsection (a) and new subsection (g) filed 1–22–98; operative 1–21–98 (Register 98, No. 4).

§ 10316. Submittal of Engineering Criteria Review Board Materials.

An applicant for a Bay Commission permit for a project that requires review by the Engineering Criteria Review Board (ECRB) shall submit to the Commission staff, at least 14 days prior to the scheduled ECRB meeting at which the Board will review the project, all of the following: thirteen 12″ x 18″ reductions of any geotechnical reports, structural plans, engineering analyses and design calculations needed to accommodate ECRB review

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: San Francisco Bay Plan, Safety of Fills, Findings a, b, c (page 13), and Policies 1 and 2 (pages 13 and 14)

HISTORY

1. New section filed 4–18–90; operative 5–18–90 (Register 90, No. 18).

Article 2. Schedule of Fees for Filing and Processing Permit Applications

HISTORY

1. Combination and amendment of sections 10330–10338 to form Appendix M filed 11–20–91; operative 12–20–91 (Register 92, No. 8). For prior history, see Register 89, No. 43.

Article 3. Filing Procedures

§ 10350. When an Application Is Submitted for Filing.

(a) An application shall be submitted for filing and the thirty (30) day time period required by California Government Code Section 65943 shall begin to run when an executed application form is received at the Commission's offices unless the applicant requests in writing that the application not be accepted as submitted for filing at that time.

(b) If the applicant requests in writing that the application not be accepted as submitted for filing when an executed application form is received at the Commission's offices, the application shall thereafter be submitted for filing and the thirty (30) day time period required by California Government Code Section 65943 and the time periods imposed by California Government Code Section 66632 and either California Government Code Section 65950 or 65952 shall begin to run when the staff receives written notification from the applicant that he or she requests the application be accepted as submitted for filing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 65943, Government Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10351. Method of Filing.

(a) If the Executive Director decides to file an application, the original executed application, all exhibits thereto, and all other relevant documents shall be stamped "Filed BCDC" with the date of filing.

(b) If the Executive Director decides that an application cannot be filed, the original executed application, all exhibits thereto, and all other relevant documents shall be stamped "Not Filed BCDC" with the date of the Executive Director's decision.

[The next page is 511.]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943, 65950–65957.1 and 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10352. Notification of Filing Decision.

Written notification of the Executive Director's decision not to file an application shall occur at the time the letter is mailed if notification is by mailing or at the time of presentation if written notification is presented to the applicant in person.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10353. Appeal from the Executive Director's Determination Not to File an Application.

(a) An applicant may appeal the Executive Director's decision not to file an application. The appeal shall be in the form of a letter to the Executive Director. The letter shall explain the reasons for the appeal and include all facts and materials the applicant believes are relevant to the appeal.

(b) The applicant shall submit the letter of appeal within ten (10) working days of receiving written notice of the Executive Director's decision not to file the application.

(c) The Executive Director shall schedule the appeal for hearing and vote by the Commission as soon as practicable following receipt of the applicant's appeal letter.

(d) The Commission shall by a majority vote of those present and voting determine whether to uphold the Executive Director's determination or to order the permit application filed.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 4. Distribution of Applications

§ 10360. Distribution of Applications.

The Executive Director shall distribute one (1) copy of the application and drawings to the following persons or agencies:

(a) U.S. Army Corps of Engineers (San Francisco or Sacramento District);

(b) California Department of Fish and Game (Manager, Region III);

(c) San Francisco Bay Regional Water Quality Control Board;

(d) State Lands Commission;

(e) Deputy Attorney General assigned to the Commission; and

(f) U.S. Fish and Wildlife Service (Sacramento Office).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(d), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 5. Amendments to Applications

§ 10370. Non–Material Amendments to Pending Major Permit Applications.

(a) An applicant whose application for a major permit is currently pending may submit a request to amend the application nonmaterially at any time prior to the mailing or reading of the staff recommendation on the previously pending application, whichever occurs first.

(b) The applicant shall submit the request for a non–material amendment to a permit application by letter that specifies the nature of the amendment and is signed by the applicant or his or her authorized representative.

(c) After the submittal of a request to amend nonmaterially a pending application for a major permit, the Executive Director shall determine whether or not to file the amended application based on whether the amendment to the application will or will not materially change the application. If the Executive Director concludes that the amendment will materially change the application, he or she shall refuse to file the amended application and shall return it to the applicant with a written statement of the reasons why he or she believes that the amendment would materially change the application and a statement that the applicant must now submit a new application that complies with the filing requirements of Section 10310 for the project as amended to amend the application, and shall continue to process the original application. If the Executive Director determines that the amendment will not materially change the application, he or she shall file the amended application and shall continue to process and the Commission shall act on the amended application in accordance with the Commission's regulations for processing and acting on major permit applications.

(d) The filing of a request for a nonmaterial amendment to a pending major permit application shall automatically supersede the original application, and the amended application shall thereafter be the only application considered as pending before the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632, Government Code; and Sections 29520 and 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal.App.3d 395, 940.

HISTORY

1. Renumbering and amendment of former Section 10370 to Section 10380, and new Section 10370 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10371. Material Amendments to Pending Major Permit Applications.

(a) An applicant whose application for a major permit is currently pending may submit a request to amend the application materially at any time prior to the mailing or reading of the staff recommendation on the previously pending application, whichever occurs first.

(b) The applicant shall include the following in any request to amend materially a pending major permit application and the Executive Director shall file the request only if the request contains the following:

(1) an agreement in writing that the time periods within which the Commission must act under the McAteer–Petris Act and the Permit Streamlining Act on a permit application begin as of the date of the filing of the request to amend the application and

(2) an application for the project as amended that meets all the filing requirements contained in these regulations for a major permit application.

(c) After the submittal of a request to amend materially a pending application for a major permit, the Executive Director shall determine whether or not to file the amended application based on whether the amended application complies with the filing requirements included in Section 10310. If the Executive Director concludes that the amended application does not comply with the filing requirements contained in Section 10310, he or she shall return it to the applicant with a written statement of the reasons why the amended application does not comply with Section 10310 and a list of the materials needed to bring the amended application into conformance with the filing requirements of Section 10310 and shall continue to process the original application. If the Executive Director determines that the amended application does comply with the filing requirements of Section 10310, he or she shall file the amended application and shall process the application and the Commission shall vote on the application in full conformance with all of the regulations that govern the filing, processing, and Commission action on a major permit application.

(d) The filing of a request for a material amendment to a pending permit application shall automatically supersede the original application, and the application as modified by the request for amendment shall thereafter be the only application pending before the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal.App.3d 935, 940.

HISTORY

1. Renumbering and amendment of former Section 10371 to Section 10381, and new Section 10371 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10372. Effect of Refusal to Withdraw Original Application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

Subchapter 3. Summaries of Applications for Major Permits

§ 10380. Contents.

(a) The Executive Director shall prepare a summary of each application for a major permit that has been filed. The summary shall be brief and understandable, shall fairly present the substance of the application and shall quote from the application wherever appropriate.

(b) The Executive Director may attach staff comments to the summary that shall be clearly labelled to distinguish them from the summary and shall point out questions of fact, applicability of San Francisco Bay Plan policies, Suisun Marsh Protection Plan policies, approved local protection program policies, related previous applications, issues identified by the staff, and other relevant matters

(c) The Executive Director may illustrate the summary with the maps or drawings furnished by the applicant and may attach other maps or drawings that would help to present fairly the substance of the application.

(d) If the Commission has prepared an environmental assessment, it shall be included as part of the application summary.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632 and 66653, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 10380, and renumbering and amendment of Section 10370 to Section 10380 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10381. Distribution of Application Summary.

(a) If the Commission did not prepare an environmental assessment, the Executive Director shall distribute the application summary and staff comments to all Commissioners, to the applicant, to all agencies listed in section 10360, to all affected cities and counties, to all individuals and organizations who have requested distribution in writing, to all other persons thought to have a particular interest in the application, and to all agencies that have jurisdiction by law with respect to any proposed activity that is the subject of the application summary no less than ten (10) days prior to the scheduled public hearing.

(b) If the Commission prepared an environmental assessment, the Executive Director shall distribute the application summary no less than thirty (30) days prior to the scheduled public hearing to all responsible agencies as defined in the California Environmental Quality Act and to all persons and entities listed in section 10381(a).

NOTE: Authority cited: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Sections 21080.5(d)(2)(C), 29500, 29501 and 29520, Public Resources Code.

HISTORY

1. Repealer of former section 10381, and renumbering and amendment of section 10371 to section 10381 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of subsection (a) filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Editorial correction of (b) and NOTE (Register 91, No. 15).
4. Amendment of subsection (a) filed 3–21–91; operative 4–20–91 (Register 91, No. 15).
5. Amendment of subsection (a) and NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

Chapter 4. Major Permit Procedures: Commission Hearings and Public Comments on Applications

Subchapter 1. Commission Hearings

Article 1. Scheduling Public Hearings

§ 10400. Scheduling Initial Hearing.

(a) No public hearing on any permit application shall be held sooner than the twenty–eighth (28th) day following the day of "receipt" of the application, except when the Executive Director determines that:

(1) hearing the application sooner than the twenty–eighth (28th) day will not cause hardship to the Commission, to other permit applicants, and to others interested in the application; and

(2) adequate time exists to prepare and to mail an application summary and notice of the public hearing.

(b) If the Executive Director determines to hold a public hearing sooner than the twenty–eighth (28th) day following "receipt" of the application, he or she shall summarize these determinations and the facts on which it was based in the meeting notice required by these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10401. Notice to Applicant and Interested Parties.

(a) At least ten (10) days prior to the initial public hearing, the Executive Director shall notify each applicant and all persons to whom the Executive Director must mail an application summary of the date of the hearing and the general procedure of the Commission concerning hearings and actions on applications.

(b) Notice to an applicant's representative as designated on the completed permit application form shall constitute notice to the applicant.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10402. Hearing Postponement.

The Executive Director may postpone a public hearing on a permit application if the postponement will not prevent the Commission from voting on an application within the time limits set out in Government Code Section 66632 and Government Code Sections 65950 through 65957.1. In deciding whether to postpone a public hearing, the Executive Director shall consider the following factors:

(a) whether the applicant requested a postponement;

(b) whether the applicant waived in writing the time period for voting set forth in Government Code Section 66632 and extended in writing the time period set forth in Government Code Sections 65950 through 65957.1;

(c) the effect that the postponement would have on the coordination and scheduling of other agenda items; and

(d) the cost of the postponement and the effect it would have on the convenience to the Commission, the staff, and the public.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632, 65950–65957.1, Government Code; and Section 29520(a), Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal. App. 936, 940.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Article 2. Hearing Procedures and Field Trips

§ 10410. Order of Hearing.

(a) The Commission's public hearing on a permit application shall proceed in the following order:

(1) the Chair shall open the public hearing;

(2) the Executive Director or the Chair shall identify the application and any correspondence received by the Commission relative to the application;

(3) the applicant or his or her representative may present any material to expand on the application summary;

(4) other persons may speak concerning the application;

(5) the applicant may rebut or comment on what the applicant believes to have been incorrect or misleading factual information given during the hearing; and

(6) to continue it to a subsequent meeting the Commission may either close the public hearing, continue it to a subsequent meeting, or leave the hearing open for additional written comment only.

(b) Except in extraordinary circumstances, no person shall speak more than once to an application. Additional comments, including rebuttal to remarks of other speakers, shall be made in writing for subsequent distribution to the Commission and interested parties.

(c) The Chair may establish time limits for presentations made during a public hearing.

(d) Commissioners may ask questions at any time as time allows.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10411. Post–Hearing Questions and Statements.

(a) After the close of a public hearing, Commissioners may still direct questions or comments to the Executive Director or the applicant.

(b) The staff shall treat written comments received after the close of the public hearing according to Sections 10430 and 10431 so long as the Commission receives them within any time limits that the Commission may set.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer of former Section 10411, and renumbering and amendment of Section 10413 to Section 10411 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10412. Field Trips.

(a) Whenever the Commission takes a field trip to the site of any proposed project, the Commission meeting notice shall state that the Commission intends to take a field trip, and the Chair shall admonish the Commission members that they shall inform the Commission at the next Commission meeting of any substantive communications they had at the field trip regarding the application with anyone other than a member of the staff or with other Commissioners. The minutes of the next Commission meeting at which the Commission discusses the application shall note the fact of the field trip.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632 and 11120–11131, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer of former Section 10412, and renumbering and amendment of Section 10414 to Section 10412 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Article 3. Additional Hearings, Withdrawal, and Off–Calendar Items

§ 10420. Continued Hearings.

The Commission should complete a public hearing on an application in one Commission meeting. However, the Chair may decide or the Commission may vote at the public hearing to continue a public hearing to a subsequent meeting if it believes that:

(a) too many speakers exist to be heard within the time reasonably available, or

(b) questions have been raised or amendments to the application or conditions have been proposed on which the public should have an opportunity to comment after time for reflection.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

§ 10421. Application Withdrawal and Removal from Active Consideration.

(a) At any time before the Commission begins to vote on an application, an applicant may either withdraw the application permanently or may remove the application temporarily from the Commission's active consideration.

(b) An applicant shall withdraw an application permanently either by a signed written document or by stating the fact of the withdrawal on the record at a Commission meeting. Withdrawal shall not require Commission concurrence.

(c) An applicant shall remove an application temporarily from active consideration either by a signed written document or by stating the fact of the removal on the record at a Commission meeting. In either case, the applicant shall expressly:

(1) extend the ninety (90) day time limit of Government Code Section 66632(f) for at least sixty (60) days; and

(2) agree that the application is withdrawn permanently unless the applicant reactivates the application in writing at least thirty (30) days prior to the expiration of the extended review period and the removal from active consideration and resultant extension of time within which the Commission acts on the application does not cause the Commission to exceed the period in which it must act on the application pursuant to California Government Code Sections 65950 through 65957.1.

(d) The applicant may remove an application from active consideration once without Commission concurrence and any number of additional times with the concurrence either of the Executive Director or the Commission if the applicant complies with the requirements of subdivision (c) of this section.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; Section 29520(a), Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) 115 Cal. App. 3d 935, 940.

HISTORY

1. Amendment filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

§ 10422. Necessity of Additional Public Hearing After Delay.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

2. Repealer filed 9–25–96; operative 9–25–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 39).

§ 10423. Procedures for a Hearing on a Materially Amended Application.

If the Executive Director files a materially amended permit application under Section 10371, the Commission shall hold an additional public hearing on the materially amended application. The Executive Director shall prepare and distribute a new or revised application summary of the amended application or an addition to the existing summary at least ten (10) days prior to the hearing on the amended application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

Subchapter 2. Public Comments on Applications

§ 10430. Distribution of Comments.

(a) Except as provided in Section 10431, the Executive Director shall promptly reproduce the text of all written communications concerning applications that the Executive Director, the Commission, or the Chair has received and shall promptly distribute the texts to the parties named in Section 10381 if the staff receives the comments either no later than 5 p.m. on the Tuesday following the close of the public hearing, provided that if the Commission votes on an application on the same day as it closes the public hearing, no written comments will be accepted after the close of the public hearing, or prior to such other deadline that the Commission may establish, provided that if an applicant submits and the Executive Director files a nonmaterial amendment to the application less than seven days prior to the close of the period for accepting written comments from the public, the public can submit written comments on the amendment at any time prior to the Commission vote on the amended application and the Executive Director shall reproduce and distribute those comments in the same manner.

(b) The Executive Director shall not reproduce and distribute written communications pertaining to a permit application received later than 5 p.m. on the Tuesday following the close of the public hearing or after such other deadline that the Commission, the Chair, or the Executive Director may establish at the Commission meeting at which the Commission holds the public hearing on the application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10431. Treatment of Similar Communications.

When the Commission or the Chair receives more than five (5) similar communications, the texts do not need to be reproduced, but the Executive Director shall inform the Commission of the names and addresses of the senders and of the substance of the communications.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Chapter 5. Major Permit Procedures: Approval or Denial of Permits

Article 1. Staff Recommendations

§ 10500. Staff Recommendation.

(a) The Executive Director shall prepare a recommendation for presentation at the meeting at which the Commission will vote on an application.

(b) The Executive Director's recommendation shall be in the form of a proposed Commission resolution that complies with Section 10501 if it recommends approval or that complies with Section 10502 if it recommends denial.

(c) In either case, the Executive Director shall also prepare and present at the meeting at which the Commission will vote on an application a summary of all significant environmental points raised during the process of reviewing the application and a staff response to each of those points.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Sections 21080.5(d)(2)(D) and 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. New subsection (c) and amendment of NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

§ 10501. Contents of Resolution of Approval.

A resolution granting an application in whole or in part shall:

(a) summarize briefly but completely the project to be approved and any differences from the project described in the application;

(b) authorize the project;

(c) state clearly and briefly the terms and conditions to which the permit will be subject;

(d) state the specific findings of fact that support, as applicable, all of the following conclusions:

(1) that the project conforms to either:

(A) the relevant provisions of California Government Code Sections 66600 through 66661 and the San Francisco Bay Plan if the project comes under the Commission's jurisdiction under California Government Code Sections 66610 and 66632, or

(B) the relevant provisions of California Public Resources Code Section 29000 through 29612, the San Francisco Bay Plan, and the Suisun Marsh Protection Plan if the project comes under the Commission's jurisdiction under California Public Resources Code Sections 29101, 29500, and 29501 and there is no certified local protection program for the Suisun Marsh, or

(C) the relevant provisions of California Public Resources Code Sections 29000 through 29612, the San Francisco Bay Plan, and the Suisun Marsh Protection Plan or of the certified local protection program for the Suisun Marsh if a certified local protection program exists and if the project comes under the Commission's jurisdiction under California Public Resources Code Section 29101, 29500, and 29501.

(2) that the project is consistent with the public trust needs for the area;

(3) that if the Commission is a responsible agency, either the project is statutorily or categorically exempt or that the lead agency has prepared and certified either a negative declaration or an environmental impact report on which the Commission has relied; and

(4) that if the Commission is the lead agency, either the project is statutorily or categorically exempt or the terms and conditions of the Commission permit together with the actions of other agencies make the project consistent with California Public Resources Code Sections 21000 through 21177.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66600, 66601, 66602, 66602.1, 66603, 66605, 66632(f) and 66632.4, Government Code; and Sections 21000–21176 and 29520(e), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10440 to Section 10501 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10502. Contents of Resolution of Denial.

A resolution denying an application shall state specifically the grounds for the denial based on findings and declarations, relevant facts, statutory criteria, and San Francisco Bay Plan policies, and Suisun Marsh Protection Plan policies and the policies of the certified local protection program, in a manner analogous to that provided in Section 10501.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Sections 21000–21176 and 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10441 to Section 10502 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10503. Terms and Conditions.

(a) The terms and conditions to which a permit is made subject, such as those relating to alternatives or measures to reduce or offset adverse impacts on the resources of the Bay, priority use areas, or public access, may concern any subject that is within the scope of the California Government Code Sections 66600 through 66661, California Public Resources Code Sections 29000 through 29612, the Commission's San Francisco Bay Plan, including any adopted Special Area Plan, the Suisun Marsh Protection Plan, the certified Local Protection Program for Suisun Marsh, Sections 3 and 4 of Article X of the California Constitution, the Management Program, and any other legislation that grants the Commission regulatory authority and that is also reasonably related to the project.

(b) Each permit shall contain conditions that the Commission has approved as part of the resolution approving the project.

(c) The terms and conditions of a permit shall normally remain effective so long as the permit remains effective, the uses authorized in the permit remain in effect, or the structures authorized in the permit remain standing, whichever is longer, unless the condition specifies differently.

(d) The terms and conditions of a permit shall bind all future owners and possessors of the property unless the Commission sets an expiration date or provides that the condition(s) shall apply only to the applicant or other specifically named party.

(e) The terms and conditions of a permit that authorizes the placement of fill or the extraction of materials shall specify dates by which the placement of fill or the extraction of materials shall commence and shall be completed. If the permit does not specify a date by which the placement of fill or the extraction of the material must be completed, the permittee must complete the placement or extraction within three (3) years of the date on which the Commission approved the permit. If the placement of the fill or the extraction of the material is not completed by the date specified in the permit or, if the permit specifies no date, by three (3) years from the date the Commission approved the permit, the authorization shall become null and void, although other conditions of the permit will still be binding. These time limitations may be extended by amendment of the permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66600, 66601, 66602, 66602.1, 66603, 66605 and 66632(f), Government Code; and Sections 21001, 21002.1, 21004, 21080.5, 29506 and 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10442 to Section 10553 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10504. Staff Recommendation—Presentation.

Before any motion on an application may be made, the Executive Director shall present the staff recommendation to the Commission. The Executive Director should mail the staff recommendation in writing to the Commission, the applicant, and each interested party from whom a written request has been received at least six (6) days prior to the meeting at which the matter is noticed. However, if the Executive Director cannot do so, he or she shall read the recommendation in full to the Commission at the meeting at which the matter is noticed for voting or provide copies of a written recommendation to each Commissioner and each interested party present at the meeting at which the matter is noticed. When copies are provided, the Chair shall allow sufficient time for each person to read the recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10451 to Section 10504 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 75, No. 51.

§ 10505. Applicant's Comments and Commission Questions.

(a) The applicant or the applicant's representative shall have an opportunity to state briefly and specifically his or her views on the Executive Director's recommendation immediately following the presentation of the recommendation.

(b) If the Executive Director has not mailed his or her recommendation to the applicant at least six (6) days prior to the meeting at which he or she scheduled the vote and if the applicant states that he or she is not prepared to state his or her views on the recommendation, the applicant may request postponement of the matter until the Commission's next scheduled meeting.

(c) If such a postponement would not extend beyond the expiration of the ninety (90) day period established by subdivision (f) of Government Code Section 66632 and beyond the time limit established by Government Code Sections 65950 through 65957.1, the applicant's comments and all Commission discussion, further questions, and voting shall be automatically postponed to the next scheduled Commission meeting.

(d) If such a postponement would extend beyond the expiration of the ninety (90) day period established by Government Code Section 66632, further action on the application shall be postponed only if the applicant agrees on the record to extend that period to allow the Commission to vote.

(e) If such postponement would extend beyond the expiration of the time limits established by Government Code Sections 65950 through 65957.1, further action on the application cannot be postponed.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950–65957.1 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10452 to Section 10505 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 75, No. 51.

Article 2. Voting

§ 10510. Time for Voting.

The Commission shall vote on an application at the same meeting as the meeting at which the Commission closes the public hearing unless either (1) one or more Commission member objects, (2) the Executive Director withdraws the tentative recommendation because he or she believes that an issue or issues were raised at the public hearing that the tentative recommendation does not adequately address, (3) the Executive Director is not prepared to present a recommendation, (4) voting at the same meeting is inconsistent with existing law or regulation, or (5) the meeting notice for that meeting does not state that the Commission may vote on the application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29520(a), Public Resources Code; and *Foundation for San Francisco Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal. App. 3d 893, 906–907.

HISTORY

1. Repealer of former Section 10510 and renumbering and amendment of Section 10450 to Section 10510 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 75, No. 51.
2. Amendment of subsection (a) and repealer of subsection (a) designator and subsections (b) and (c) filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 10511. Straw Votes.

The Commission will take a straw vote on any question if the Chair believes that it will facilitate consideration of any application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10454 to Section 10511 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 75, No. 51.

§ 10512. Voting Procedure.

(a) Any voting member may move to vote on an application. The motion shall be to approve the application, either with or without conditions.

(b) The Commission shall vote on permit applications by roll call in alphabetical order except that the Chair shall vote last.

(c) Votes by the Commission shall only be on the affirmative question of whether the permit should be granted, i.e., a "yes" vote shall be to grant a permit (with or without conditions) and a "no" vote shall be to deny a permit.

(d) Any member may change his or her vote only before the Chair announces the results of the vote.

(e) Thirteen (13) or more "yes" votes shall mean that the Commission has approved the application with such conditions as the motion contained.

(f) Less than thirteen (13) "yes" votes shall mean that the Commission has denied the application.

(g) Once the Chair announces the results of the vote, it shall be the final action on the application except as provided in Section 10514 for the adoption of findings to support the Commission's actions.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29520(a), Public Resources Code; and *Foundation for San Francisco Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal. App. 3d 893, 906–907.

HISTORY

1. Renumbering and amendment of Section 10455 to Section 10512 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 75, No. 51.

§ 10513. Voting by Members Absent from Hearing.

(a) A member may vote on any application despite having been absent from the public hearing(s) on the application if he or she has read the minutes of the hearing(s) and has had an opportunity to ask questions concerning the application at a Commission meeting before voting.

(b) Prior to commencing a roll call on any application, the Chair should ask members who were not present at the hearing(s) on the application to indicate for the record that they have read the application summary and the minutes of the hearing(s) and are prepared to vote.

(c) Inadvertent failure to follow the procedure set out in paragraph (b) of this section shall not invalidate the vote.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29520(a), Public Resources Code; and *Le Strange v. City of Berkeley* (1962) 210 Cal. App. 2d 313, 325.

HISTORY

1. Renumbering and amendment of Section 10457 to Section 10513 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 18.

§ 10514. Commission Findings on Permits.

(a) If the Commission vote is consistent with the Executive Director's recommendation, the findings and conclusions contained in the recommendation shall become the Commission's findings and conclusions unless the Commission expressly adopts different or additional findings.

(b) If the Executive Director recommends approval and the Commission approves the application with additional terms or conditions or different terms or conditions than those recommended by the Executive Director, those members of the Commission who voted for approval shall state their reasons for requiring the additional or different terms or conditions after the vote becomes final.

(c) If the Executive Director recommends approval and the Commission denies the application, all members who vote "no" on the application shall state their reasons for their "no" vote after the vote becomes final.

(d) If the Executive Director recommends denial and the Commission votes to approve the application, all members who vote "yes" shall state their reasons for their "yes" vote after the vote becomes final.

(e) When the Commission has voted on a permit application in a manner that is not consistent with the Executive Director's recommendation, the Executive Director shall prepare draft findings based on the statements made by those Commission members who voted consistent with the outcome of the vote and on such other materials as the Executive Director believes is necessary to support the Commission's decision legally or is otherwise appropriate. The Executive Director shall present proposed findings to the Commission at the meeting following the vote on the application, at which time the Commission shall vote on the proposed findings. Only those Commission members who voted consistent with the prevailing decision may vote on whether or not to adopt the proposed findings. The vote shall be by a majority of those present and voting. If those present and voting do not adopt the proposed findings that the Executive Director has submitted, they can either make such changes as they determine are appropriate and adopt the findings at that meeting or direct the Executive Director to prepare further proposed findings and submit them to the Commission at the next meeting, in which case those who voted consistent with the prevailing decision may again vote on whether to adopt the further proposed findings. This cycle shall continue until the Commission has adopted findings to support its decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; Section 29520(a), Public Resources Code; *Sierra Club v City of Hayward* (1981) 28 Cal. 3d 840, 858–60; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514–17; and *Foundation for San Francisco Architectural Heritage v. City and County of San Francisco*, (1980) 106 Cal. App. 3d. 893, 906–907.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10515. Specific Action.

The approval of an application by its receiving thirteen (13) or more "yes" votes or the denial of an application by its receiving less than thirteen (13) "yes" votes shall be the "specific action" granting or denying the permit as required by the second sentence of subdivision (f) of Government Code Section 66632.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10458 to Section 10515 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, Register 73, No. 18.

§ 10516. Environmental Documentation Required for Public Hearing and Vote on Major Permit.

Before the Commission may hold a public hearing and vote on a major permit, the Commission must receive a copy of any required environmental determination and certified environmental document issued by the lead agency, as follows:

(a) If a negative declaration or environmental impact document for a project must be certified by the lead agency under the California Environmental Quality Act (CEQA), then the applicant may submit the certification and document as part of the permit application.

(b) When the certification and document are not submitted as part of the permit application, either (1) the applicant must submit a copy of the certification and document before the Commission holds a public hearing and votes on the permit, or (2) the Commission shall deny a permit for the project.

NOTE: Authority cited: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65941 and 66632(f), Government Code; and Sections 21000(g) and 29520, Public Resources Code.

HISTORY

1. New section filed 1–26–98; operative 2–25–98 (Register 98, No. 5).

Article 3. Issuance of Permits

§ 10520. Contents of Permits.

Permits shall be signed by the Executive Director and shall include:

(a) the text of the Commission's resolution of approval, including all conditions, with all necessary exhibits and the vote of approval;

(b) any other language or drawings, in full or incorporated by reference, that are consistent with the Commission's resolution of approval, and required to clarify or facilitate carrying out the intent of the Commission;

(c) provisions for "all public improvements and public utility facilities which are necessary or incidental to the project," as determined by the Executive Director;

(d) an unexecuted notice of receipt; and

(e) an unexecuted notice of completion.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Repealer of former Section 10520, and renumbering and amendment of Section 10610 to Section 10520 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10521. Mailing to Permittee(s).

(a) The Executive Director shall sign and shall mail the permit to all permittee(s) within fifteen (15) working days following the approval, provided that if the permit authorizes the disposal of any dredged material in either the Commission's "San Francisco Bay" jurisdiction or the Commission's "certain waterways" jurisdiction, the applicant must also submit a user fee as provided for in section 10522 before the Executive Director shall sign and mail the permit.

(b) Within five days of the Commission approval, an applicant may request in writing that the Executive Director extend to 30 working days the time period specified in subsection (a) within which the Executive Director must issue the permit. Upon receipt of such a timely request, the Executive Director shall not issue the permit until the permittee agrees to its issuance or until the 30th working day after the approval of the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 10521 to section 10610, and renumbering and amendment of section 10630 to section 10521 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 11–23–92; operative 12–23–92 (Register 92, No. 48).
3. Amendment filed 8–20–96; operative 9–19–96 (Register 96, No. 34).
4. Designation of first paragraph as subsection (a) and new subsection (b) filed 4–15–97; operative 5–15–97 (Register 97, No. 16).

§ 10522. User Fees for Disposal of Dredged Material Into Commission's "Bay" or "Certain Waterways" Jurisdictions.

(a) For the disposal of dredged materials into either the Commission's "San Francisco Bay" jurisdiction or the Commission's "certain waterways" jurisdiction other than as part of a "beneficial use project," as defined in subsection (c), the applicant shall submit prior to the issuance of any permit a check or money order in the amount equal to the product of $0.07 multiplied by the number of cubic yards proposed to be disposed.

(b) If the sum of all user fees collected pursuant to this section to help finance the Commission's participation in the Long Term Management Strategy program exceeds $210,000, the Commission shall not require any further user fees pursuant to this section and shall return to all permit applicants all user fees collected in excess of $210,000.

(c) "Beneficial use projects," as that term is used in California Government Code Section 66667(b) and in these regulations, are those projects in the Commission's "San Francisco Bay" or "certain waterway" jurisdictions where the dredged material will be used (1) as construction material, and (2) in one of the following types of projects: (A) habitat improvement; (B) repair or improvement of levees; (C) port or public access facilities; or (D) other Commission–approved fill projects.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632 and 66667, Government Code.

HISTORY

1. Renumbering of former section 10522 to section 10523 and new section filed 11–23–92; operative 12–23–92 (Register 92, No. 48).
2. Amendment of section heading and section filed 8–20–96; operative 9–19–96 (Register 96, No. 34).

§ 10523. Distribution of Permit Copies.

The Executive Director shall send a copy of the permit to the appropriate U.S. Army Corps of Engineers District Engineer and to any other person or organization who has requested in writing receipt of a copy.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10631 to section 10522 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 10523 to section 10524 and renumbering of former section 10522 to section 10523 filed 11–23–92; operative 12–23–92 (Register 92, No. 48).

§ 10524. Notice of Permit.

Notice of the issuance of a permit in which the Commission has prepared an environmental assessment and is acting as lead agency shall be filed with the Secretary of the Resources Agency.

NOTE: Authority cited: Section 66632(), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Sections 21108(a) and 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10632 to section 10523 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 10524 to section 10525 and renumbering of former section 10523 to section 10524 filed 11–23–92; operative 12–23–92 (Register 92, No. 48).

§ 10525. Notice of Receipt and Acknowledgment.

A permit shall not become effective and the permittee(s) shall not start work on the project until the Commission receives the original permit on which all permittees have acknowledged that they have received the permit and understand and accept the contents of the permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10620 to section 10524 filed 5–18–87; operative 6–17–87 (Register 87, No.30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 10525 to section 10526 and renumbering of former section 10524 to section 10525 filed 11–23–92; operative 12–23–92 (Register 92, No. 48).

§ 10526. Disputes over Contents of a Permit.

(a) Any permittee who believes that the permit issued does not correctly embody the action of the Commission shall inform the Executive Director in writing of the disagreement within thirty (30) days of receipt of the permit.

(b) The permittee, the Executive Director, and the Chair shall consult and resolve the dispute if possible.

(c) If the permittee, the Executive Director, and the Chair cannot resolve the dispute, the Executive Director shall refer the dispute to the full Commission for resolution.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10640 to section 10525 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 10525 to section 10526 filed 11–23–92; operative 12–23–92 (Register 92, No. 48).
3. Amendment of subsection (a) filed 5–1–97; operative 5–31–97 (Register 97, No. 18).

Article 4. Denial of Permits

§ 10530. Notification of Denial of Permit Application.

(a) The Commission shall notify an applicant of the denial of a permit application in a letter that includes the text of the Commission's resolution of denial or the reasons for denial and the vote thereon.

(b) The Executive Director shall sign each notification of denial and shall mail it to the applicant(s) no later than fifteen (15) working days following the denial.

(c) The Executive Director shall send copies of the notification of denial to the U.S. Army Corps of Engineers District Engineer and to any other person or organization who has requested in writing notification of the denial.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10650 to Section 10530 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 5. Notice of Completion

§ 10540. Notice of Completion.

The permittee(s) shall file an executed notice of completion with the Executive Director within two (2) weeks of completion of the work authorized in the permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10660 to Section 10540 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Chapter 6. Permit Procedures: Administrative and Emergency Permits

Subchapter 1. Procedures for Permits for Minor Repairs or Improvements (Administrative Permits)

Article 1. Definitions

§ 10600. Administrative Permit.

"Administrative permit," sometimes referred to as a "minor permit," means a permit issued for minor repairs or improvements.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10601. Minor Repairs or Improvements.

"Minor repairs or improvements" means any activity for which a Commission permit is required, that is either (a) necessary to the health, safety, or welfare of the public in the entire Bay Area, (b) consistent with the Government Code sections 66600 through 66661 and the San Francisco Bay Plan, or (c) consistent with the Public Resources Code sections 29000 through 29612 and Suisun Marsh Protection Plan or with the certified Suisun Marsh Local Protection Program, and that falls into one or more of the following categories:

(a) with respect to activities in San Francisco Bay:

(1) the construction of a new single boat dock no larger than 1,000 square feet or a new multiple boat dock no larger than 5,000 square feet, or up to 20,000 square feet of expansion of boat docking facilities within an existing marina;

(2) the installation of new protective works and repairs to existing protective works, such as bulkheads and riprap, that meet the following criteria:

(A) the size of the new work(s) or the repairs to the existing work(s) constitute the minimum amount necessary to stabilize existing dikes and banks or to provide improved fish or wildlife habitat, and

(B) the new work or repairs to existing work(s) would cover less than 10,000 square feet of the horizontal projection of the work below the shoreline;

(3) the placement of piles to support extensions of portions of principal structures, as defined in section 10702(b), over the water where the total of any such extensions would not exceed 1,000 square feet in area;

(4) the placement of outfall pipes approved by the California Regional Water Quality Control Board, San Francisco Bay Region;

(5) the placement of utility cables on or under the bottom of the Bay;

(6) routine repairs, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or change in use;

(7) minor fill for improving shoreline appearance that complies with section 10700 and that does not exceed 1,000 square feet in area; and

(8) minor fill for improving public access that complies with section 10701 and that does not exceed 1,000 square feet in area.

(b) with respect to activities in the 100–foot shoreline band:

(1) the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change of use of any area so long as the placement, extraction, or change in use does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water–related use, and on the environment;

(2) the construction of one– and two–family residences and ancillary residential structures on any parcel except in cases where the parcel was subdivided after June 17, 1987 and the subdivision was not authorized by a Commission permit, or when the residence would adversely affect existing physical or visual public access, or affect potential visual public access;

(3) any substantial change in use of a structure built on piles placed over the Bay prior to September 17, 1965 where the change in use does not involve any change in the structure, piles, or the extent of water coverage;

(4) the installation of new protective works and repairs to existing protective works, such as bulkheads and riprap, in the minimum amount necessary to stabilize existing dikes and banks or to provide improved fish or wildlife habitat;

(5) routine repairs, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or any substantial change in uses; and

(6) any subdivision of land or other division of land.

(c) with respect to activities in salt ponds and managed wetlands:

(1) the reconstruction of existing power transmission towers, communication towers, and walkways providing access to such towers; and

(2) repairs to protective works in the minimum amount necessary to stabilize existing dikes or to provide improved wildlife habitat.

(d) with respect to activities in the Suisun Marsh:

(1) one or more of the activities listed in paragraph (a), (b), or (c) of this section;

(2) any subdivision of land or other division of land, including lot splits;

(3) the removal of vegetation;

(4) the discharge of any gaseous, liquid, or thermal waste as approved by the California Regional Water Quality Control Board, San Francisco Bay Region;

(5) the grading of any materials; and

(6) the construction, reconstruction, relocation, demolition, or alteration of the size of any one– or two–family residence, duck club structure, farm structure and ancillary structures, and any facility of any private, public, or municipal electrical generating facility with a capacity of less than ten (10) megawatts electrical (10MWe), and any other private, public, or municipal utility facility of less than 10,000 square feet.

(e) with respect to activities anywhere in the Commission's jurisdiction:

(1) the placement of a temporary structure provided that the structure is removed no later than 180 days after its placement and the area is returned to its pre–existing condition within a reasonable time thereafter;

(2) the temporary substantial change in use of water, land, or a structure, provided that the initial use is reestablished no later than 180 days after the temporary change in use;

(3) any other activity similar to those listed in paragraphs (a), (b), (c), and (d) of this section that would have no greater adverse impact on the Bay than the listed activities; and

(4) the placement of facilities required for environmental quality testing that does not involve placement of fill, change in use or alteration of public access for a period of time longer than provided by the permit for completion of the work, and would not otherwise have a substantial effect on Bay–related resources.

(f) with respect to dredging or disposal activities located anywhere within the Commission's jurisdiction, those activities specified in Section 10602.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(a) and (f), Government Code; and Sections 29201(e) and 29505, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment of subsections (a)(10) and (a)(11) filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment of subsection (a)(5) filed 9–17–90; operative 10–17–90 (Register 90, No. 43).
4. Amendment of subsections (a)(4), (b)(2), (e)(2) and (e)(3), and new subsection (e)(4) filed 7–27–92; operative 8–26–92 (Register 92, No. 31).
5. Renumbering of subsections (a)(1)–(3) to new section 10602 and subsection renumbering with amendments and new subsection (f) and amendment of NOTE filed 2–2–93; operative 3–4–93 (Register 93, No. 6).
6. Amendment of first paragraph, redesignation and amendment of subsections (a)(2)(a) and (a)(2)(b) to subsections (a)(2)(A) and (a)(2)(B), and amendment of subsections (a)(6) and (b)(1) and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).
7. Amendment of subsection (b)(2) filed 7–18–96; operative 8–17–96 (Register 96, No. 29).
8. Amendment of subsection (a)(1) filed 7–30–96; operative 8–29–96 (Register 96, No. 31).

§ 10602. Administrative Permits Related to Dredging and Disposal Projects.

The following dredging and disposal projects constitute "minor repairs or improvements" that may be authorized administratively:

(a) All maintenance dredging projects that are completed within a period of 10 years;

(b) Any new dredging of 200,000 cubic yards or less completed within a period of 10 years;

(c) Sand mining projects where the sand is sold or re–used, where the project is completed within a period of five years, and where no more than 250,000 cubic yards are dredged in any one year;

(d) New dredging projects to deepen existing navigation channels or basins that do not result in significant adverse environmental impacts or raise conflicts with the Commission's laws and policies, and where the dredged material is disposed of outside the Commission's Bay or certain waterways jurisdictions;

(e) the disposal of dredged material that occurs only at a site listed in Regulation Section 10713.5; and meets either one of the following criteria:

(1) the amount of material to be disposed of does not exceed, individually or cumulatively with other projects for the calendar year, the following volumes for the listed disposal sites:

(A) at the Alcatraz Island site (SF–11): 4 million cubic yards annually with a monthly maximum of 400,000 cubic yards between October 1st of each year and April 30th of the following year and a monthly maximum of 300,000 cubic yards between May 1st and September 30th of each year;

(B) At the San Pablo Bay site (SF–10): 500,000 cubic yards annually;

(C) At the Carquinez Strait site (SF–9): 3 million cubic yards annually in a wet or above normal water flow year as those years are classified by the Department of Water Resources and 2 million cubic yards annually in all other year classifications, and in either case with a maximum of 1 million cubic yards in any one month; and

(D) At the Suisun Bay Channel site (SF–16): 200,000 cubic yards annually for U.S. Army Corps of Engineers Suisun Bay Channel and New York Slough channel maintenance dredging projects only; or

(2) the disposal involves only the disposal of material dredged by a small dredger as defined in Section 10727.

(f) the disposal of less than 30,000 cubic yards of dredged material at any location other than that identified in Section 10602(e)(1) in a manner and at a time approved by the Executive Director, after consultation with National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game and agreement by the U.S. Army Crops of Engineers, San Francisco District, and by the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, as involving no or small potential risk of an adverse environmental impact;

(g) The disposal of any amount of dredged material in the ocean, the Suisun Marsh, a salt pond, a managed wetland, or a non–aquatic location.

NOTE: Authority cited: Section 66632(f), Government Code; and section 29201(e), Public Resources Code. Reference: Sections 66632(a) and (f), and 66663–66666, Government Code; and sections 29201(e) and 29505, Public Resources Code.

HISTORY

1. Renumbering of section 10601 subsections (a)(1)–(3) to section 10602 with amendments and new subsections (c)(2)–(c)(3)(B) and (e) and NOTE filed 2–2–93; operative 3–4–93 (Register 93, No. 6).
2. Amendment of subsections (a) and (b), new subsections (c) and (d), subsection relettering, and amendment of newly designated subsections (e)(2) and (f) filed 1–29–98; operative 2–28–98 (Register 98, No. 5).
3. Amendment of section and NOTE filed 6–16–2008; operative 7–16–2008 (Register 2008, No. 25).

Article 2. Applications for Administrative Permits

§ 10610. Application.

For an activity asserted to be "minor repairs or improvements," an applicant shall furnish:

(a) one (1) original copy of a fully completed and properly executed application form which these regulations contain as Appendix D;

(b) exhibits to the application form as provided by Appendix F and Section 10625;

(c) an executed Certificate of Posting of "Notice of Pending BCDC Application" form as provided by Appendix E;

(d) evidence that all local discretionary approvals (i.e., all approvals other than ministerial permits such as building permits) have been received, or for subdivisions or other land divisions requiring a Commission permit for which final local approval or disapproval has not been granted, a statement that the local government either favors the project, with or without conditions, or does not favor the project; and

(e) a check or money order in the amount shown in Appendix M.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 10610 to section 10520, and renumbering and amendment of section 10521 to section 10610 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Amendment of subsection (b) and NOTE filed 1–26–98; operative 2–25–98 (Register 98, No. 5).
4. Amendment of subsection (e) filed 10–14–2004; operative 10–14–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 42).

§ 10611. Executive Director's Determination If an Application for an Administrative Permit Should Be Filed.

(a) If the Executive Director believes that an application for an administrative permit is complete and properly qualifies for processing as an administrative permit application under Section 10601, he or she shall file the application and notify the applicant of that fact.

(b) If the Executive Director believes that an application for an administrative permit is not complete or does not properly qualify for processing as an administrative permit application under Section 10601, he or she shall notify the applicant of the determination with an explanation within thirty (30) days of receiving the application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10540 to Section 10611 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10612. Amendments to Administrative Permit Applications.

(a) An applicant for an administrative permit may amend the application after the application has been filed at least two days prior to the mailing of the administrative listing for the application.

(b) An applicant who wants to amend an application for an administrative permit shall submit the amendment request by a letter that fully describes the amended project and is signed by the applicant or his or her authorized representative.

(c) The submittal of a request to amend a pending administrative permit application shall automatically supersede the original application, and the amended application shall thereafter be the only application considered to be submitted to the Commission.

(d) If the Executive Director determines that the amended project still qualifies as a "minor repair or improvement," the Executive Director shall notify the applicant that the amendment has been filed and shall thereafter proceed according to these regulations to complete processing of the amended application as an application for an administrative permit.

(e) If the Executive Director determines that the project as amended no longer qualifies as a minor repair or improvement, the Executive Director shall notify the applicant of the Executive Director's determination and that the applicant can apply for a major application to authorize the amended project.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65943 and 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

Article 3. Approval or Denial of Administrative Permits

§ 10620. Administrative—Listing.

(a) Before acting on any permit application for "minor repairs or improvements," the Executive Director shall submit a list of the applications that are ready to be acted on to the Commission, to any persons who requested receipt of the list in writing, and to all agencies that have jurisdiction by law with respect to the proposed activity that is the subject of the matter listed. The list shall include the following for each application:

(1) the name and address of each of the applicant(s);

(2) the date on which the application was filed;

(3) an informative summary of the work proposed, including the location of the proposed project;

(4) the number assigned to each application;

(5) the name of the responsible staff member;

(6) whether the Executive Director recommends approval or denial of the application or has not yet reached a decision; and

(7) a summary of all significant environmental points raised during the review process and a staff response to each of those points.

(b) The listing will be mailed at least five (5) days prior to a regularly scheduled Commission meeting date. Any further significant environmental concerns raised after the list was submitted, along with the staff response to each concern, shall be provided to the Commission at the regularly scheduled meeting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Sections 21080.5(d)(2)(C), 21080.5(d)(2)(D) and 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10620 to Section 10524, and renumbering and amendment of Section 10542(a) and (b) to Section 10620 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of section and NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

§ 10621. Executive Director's and Commission's Action After Listing.

(a) The Executive Director cannot act on an administrative permit application if either one of the following sets of circumstances exist:

(1) when the Commission holds a meeting within 14 days of the mailing of the administrative listing, one or more Commissioner has objected at the meeting to the issuance of the administrative permit and the Commission has determined at that meeting by a majority of those present and voting that the Commission should process the application as a major permit application;

(2) when the Commission does not hold a meeting within 14 days of the mailing of the administrative listing, one or more Commissioner has submitted to the Executive Director a written objection to the issuance of the administrative permit within 14 days of the mailing of the administrative listing and the Commission has determined at the first meeting following the objection by a majority of those present and voting that the Commission should process the application as a major application;

(b) The Executive Director can act on an application for an administrative permit despite the restrictions contained in subsection (a) of this section if compliance with subsection (a) would prevent the Executive Director and Commission from acting within the 90–day time period with which the McAteer–Petris Act requires action on a permit application.

(c) If the Commission determines that the Commission should consider the application the Executive Director shall within five (5) working days notify the applicant that he or she has denied the application with the reasons for denial being that the activity could not be properly considered as a minor repair or improvement and with information on how to proceed.

(d) If the Commission does not determine that the Commission should consider the application, the Executive Director shall act on that the application within five (5) working days.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10542(c) and (d) to Section 10621 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10622. Criteria and Contents of Permits.

(a) The Executive Director shall approve an application for an administrative permit only if he or she determines that the proposed activity, including reasonable terms and conditions, qualifies as a minor repair or improvement and is consistent with California Government Code Sections 66600 through 66682, the San Francisco Bay Plan, California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, the certified Suisun Marsh Local Protection Program, California Public Resources Code Sections 21000 through 21176, and these regulations.

(b) Administrative permits are subject to the same policies as a major permit and shall be governed by the provisions of Chapter 5, concerning the format, receipt, and acknowledgment of permits, including the need to pay a user fee of $0.07 per cubic yard prior to the issuance of the administrative permit for dredged material to be disposed within either the Commission's "Bay" or "certain waterways" jurisdictions as described in section 10522, except that references to "Commission resolution" shall refer instead to the "Executive Director's determination."

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66667, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 11–23–92; operative 12–23–92 (Register 92, No. 48).
3. Editorial correction of subsection (b) (Register 95, No. 41).
4. Amendment of subsection (b) and NOTE filed 8–20–96; operative 9–19–96 (Register 96, No. 34).

§ 10623. Denial of an Administrative Permit—Notice to Applicant.

If the Executive Director denies an application for an administrative permit, he or she shall notify the applicant with an explanation of the reasons for denying the application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10541 to Section 10623 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10624. Denial of an Administrative Permit—Filing with the Commission.

If the Executive Director returns unfiled or denies an application for an administrative permit or the applicant objects to a term or condition in the permit, the applicant may take the application to the Commission without waiting ninety (90) days by complying with all the provisions of these regulations dealing with major permit applications.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10625. Environmental Documentation Required for Approval of Minor Permit.

Before the Executive Director may approve a minor permit, the Commission must receive a copy of any required environmental determination and certified environmental document issued by the lead agency, as follows:

(a) If a negative declaration or environmental impact document for a project must be certified by the lead agency under the California Environmental Quality Act (CEQA), then the applicant may submit the certification and document as part of the permit application.

(b) When the certification and document are not submitted as part of a permit application, either (1) the applicant must submit a copy of the lead agency's certification and document before the Executive Director submits an administrative listing of the application to the Commission as specified in Section 10620, or (2) the Executive Director shall deny a permit for the project.

NOTE: Authority cited: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65941 and 66632(f), Government Code; and Sections 21000(g) and 29520, Public Resources Code.

HISTORY

1. New section filed 1–26–98; operative 2–25–98 (Register 98, No. 5).

Subchapter 2. Emergency Permits

Article 1. Applications

§ 10640. Method of Application.

Applications for emergency permits shall be made by letter if time allows, or by telephone or in person if time does not allow use of a letter.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10640 to Section 10525, and renumbering and amendment of Section 10575 to Section 10640 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 70, No. 46.

§ 10641. Necessary Information for Application.

An application shall describe the nature of the emergency, the location of the emergency, and the work proposed. The amount of information needed to describe these aspects of the emergency shall be consistent with the time the emergency allows.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10576 to Section 10641 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 70, No. 46.

Article 2. Procedures

§ 10650. Verification of Emergency.

The Executive Director shall verify the facts surrounding the emergency, particularly the existence and nature of the emergency, insofar as time allows.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10650 to Section 10630, and renumbering and amendment of Section 10580 to Section 10650 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 79, No. 29 and 70, No. 46.

§ 10651. Consultation with Chair.

If time allows, the Executive Director shall consult with the Chair before granting an emergency permit. If time does not allow consultation prior to granting the permit, the Executive Director shall notify the Chair as soon as possible after granting the emergency permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10581 to Section 10651 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 70, No. 46.

§ 10652. Criteria for Granting Permit.

The Executive Director shall grant an emergency permit, upon reasonable terms and conditions, if he or she finds that:

(a) An emergency exists and requires action more quickly than can reasonably occur when following the Commission's procedures for issuing permits; and

(b) The work proposed would be consistent with California Government Code Section 66600 through 66661, the San Francisco Bay Plan, California Public Resources Code Section 29000 through 29612, the Suisun Marsh Protection Plan, California Public Resources Code Sections 21000 through 21177, the certified Suisun Marsh local protection program, and these regulations, as they might apply.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66653, Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10582 to Section 10652 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 70, No. 46.
2. Amendment of subsection (a) filed 10–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10653. Documentation Subsequent to Issuance of an Emergency Permit.

Within five (5) working days after having received an emergency permit, the permittee shall deliver to the Executive Director descriptive material concerning the emergency work that is substantially similar to the documentation required in applications for administrative permits and all appropriate fees for the work.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10583 to Section 10653 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 70, No. 46.

§ 10654. Report to Commission.

The Executive Director shall report to the Commission, as part of the administrative permit listing at each meeting, the permits for "emergencies" that he or she has issued since the last report.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10584 to Section 10654 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 70, No. 46.

Article 3. Emergency Repairs to Maintain Public Services

§ 10660. Emergency Repairs to Maintain Public Services.

The notification that California Government Code Section 66632.2(b) requires shall include descriptive material concerning the work that is substantially similar to the documentation required in applications for administrative permits.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632.2, Government Code; and Section 29509, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10660 to Section 10540, and renumbering and amendment of Section 10590 to Section 10660 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 79, No. 29 and 70, No. 46.

Chapter 7. Special Rules

Article 1. Special Rules for Non–Water–Oriented Fills

§ 10700. Minor Fill for Improving Shoreline Appearance.

The Commission may approve the placement of minor fill to improve shoreline appearance, including the mooring of an historic ship as defined in Section 10703 or the repair, maintenance, renovation, remodeling, rehabilitation, or replacement of a pre–existing residential structure as defined in Section 10705, only if, in addition to the other findings required by Cal. Government Code Section 66605 and the San Francisco Bay Plan, the Commission finds and declares that:

(a) the fill is necessary because:

(1) the present appearance of the Bay and shoreline in the area adversely affects enjoyment of the Bay and its shoreline within the site area itself or within adjacent areas of the Bay or shoreline, and

(2) it is either physically impracticable or economically infeasible to improve the appearance without filling;

(b) the amount of filling approved is the minimum necessary to improve shoreline appearance;

(c) the proposed project would improve the shoreline appearance; and

(d) the fill will not adversely affect enjoyment of the Bay and its shoreline within the fill area itself or within adjacent areas of the Bay and shoreline and the fill will not have any adverse effect on present or possible future use of the area for any designated priority water–related use or for public access, and

(e) with regard to a pre–existing residential structure, the requirements of subdivisions (b) and (c) above will be deemed met if the repair, maintenance, rehabilitation, renovation, remodeling or replacement will not substantially enlarge the size of the pre–existing structure, will not be out of character or scale with any nearby structures, will cover less of the Bay surface than the pre–existing structure, and will not change the use of the pre–existing structure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66605 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment of first paragraph and new subsection (e) filed 11–30–93; operative 12–30–93 (Register 93, No. 49).

§ 10701. Minor Fill for Improving Public Access.

The Commission may approve the placement of minor fill to improve public access, including the mooring of an historic ship as defined in Section 10703, only if, in addition to the other findings required by Cal. Government Code Section 66605 and the San Francisco Bay Plan, the Commission finds and declares that:

(a) the fill is necessary because:

(1) there is at present inadequate public access to the Bay shoreline in the area, and

(2) it is either physically impracticable or economically infeasible to improve public access without filling;

(b) the fill will improve public access to the Bay; and

(c) the amount of filling approved is the minimum necessary to provide improved public access to the Bay.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66605 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10702. Using the Bay as a Design Asset.

(a) The Commission may approve the extension of an accessory structure, such as a boat dock, and portions of a principal structure on pilings over water when the Commission, in addition to findings required by Cal.

Government Code Section 66605 and the San Francisco Bay Plan, including those that require that fill in San Francisco Bay be either for a water-oriented use, minor fill to improve shoreline appearance, or minor fill to improve public access, finds and declares that:

(1) either:

(A) the extension is necessary to allow actual use of the water, i.e., for mooring boats, or

(B) the extension is:

(1) designed by means such as location, window placement, and size to afford to occupants of the structure a feeling of closeness to the surface of the Bay waters that cannot be achieved except by the extension of portions of structures over water on piles;

(2) designed so as not to adversely affect enjoyment of the Bay and its shoreline by residents of, employees of, and visitors to the structure or adjacent areas of the Bay or shoreline; and

(2) the extension is not inconsistent with the public trust.

(b) "Portions of a principal structure" means those portions of a structure that (1) would improve shoreline appearance, (2) would cover no more than 1,500 square feet of the Bay's surface, and (3) would not exceed two stories in height, provided that the Executive Director, if the project constitutes a minor repair or improvement, or the Commission may allow greater coverage or height if it finds that exceptional circumstances such as (1) steepness of terrain, (2) shallowness of a lot as it existed on November 10, 1969, or (3) design of a project to preserve adjacent areas having high natural resource values justifies the greater coverage or height.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66605, Government Code; Sections 29008 and 29501(b), Public Resources Code; and San Francisco Bay Plan, Page 31.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10703. Historic Ship.

An "historic ship," as used in Sections 10700 and 10701, means one of the following:

(a) a ship or boat, other than a replica, that:

(1) was designed and built to move in the water under its own power,

(2) is berthed to float at all stages of the tide,

(3) was originally built before 1932, and has no restorative or other modifications that substantially altered its historic character, and

(4) had a specific role as a prototype or participant in a significant event or events in the maritime history of San Francisco Bay;

or

(b) a ship or boat, other than a replica, that:

(1) was designed and built to move in the water under its own power,

(2) is berthed to float at all stages of the tide,

(3) had a specific role as a prototype or a participant in a significant event or period of maritime history,

(4) is displayed for its historic significance with any fees for public admittance charged only at a level to maintain and enhance the historic qualities of the ship or exhibits of similar maritime historic significance, and

(5) includes no commercial activities on-board or nearby other than those that are minor in nature and designed to enhance a visitor's enjoyment of the historical significance of the ship.

NOTE: Authority cited: Section 66632(f), Government Code Reference: Sections 66605(a) and 66632, Government Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment of subsection (a) (3) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
3. Amendment of subsection (a)(3) filed 7–13–2000; operative 8–12–2000 (Register 2000, No. 28).

§ 10704. Fill Necessary to the Welfare of the Public to Protect Historic Structures.

The Commission may approve fill as necessary to the welfare of the public in the entire Bay Area to protect historic structures only if the Commission finds and declares that:

(a) the fill would be necessary to repair, maintain or rehabilitate a structure that has been listed on the National Register of Historic Places or as a California Registered Historical Landmark;

(b) the repair, maintenance or rehabilitation project would be limited to the site of the historic structures and would not result in a significant increase in Bay coverage;

(c) the fill is necessary because it is physically impracticable to repair, maintain or rehabilitate the structure without filling;

(d) the amount and type of fill is the minimum necessary and the least detrimental to accomplish the repair, maintenance or rehabilitation of the structure;

(e) the repair, maintenance or rehabilitation project, including all fill associated with the project, would not alter the structure's historic designation;

(f) the repair, maintenance or rehabilitation project, including all fill associated with the project, would not adversely affect the present or future use of the area for water-oriented priority land uses designated by the Commission pursuant to California Government Code Section 66611;

(g) maximum feasible public access would be provided as part of the repair, maintenance or rehabilitation project; and

(h) the repair, maintenance or rehabilitation project, including all fill associated with the project, would comply with the provisions of Cal. Government Code Section 66600 through Section 66661 et seq. and the San Francisco Bay Plan, except those policies limiting fill to water-oriented uses.

NOTE: Authority cited: Section 66632(f), Government Code and Section 29201(e), Public Resources Code. Reference: Sections 66605(a) and 66632(f), Government Code and Section 29201(e), Public Resources Code.

HISTORY

1. New section filed 10–20–92; operative 11–19–92 (Register 92, No. 43).

§ 10705. Pre-Existing Residential Structure.

A "pre-existing residential structure" as used in Section 10700 means a residential structure on or partially on pilings or cantilevered over areas located within the Commission's "San Francisco Bay" jurisdiction that:

(a) either (1) has been in existence at its present location since September 17, 1965 or (2) has been authorized by a Commission permit; and

(b) is located on a privately-owned parcel that has not been subdivided after April 15, 1993; and

(c) either (1) has been occupied and used as a residence for at least three years during the five year period immediately prior to the filing of a permit application with the Commission for the repair, maintenance, rehabilitation or replacement of the structure, or (2) extenuating circumstances exist that prevent the requirements of subdivision (c)(1) above from being met, and other evidence exists that proves the structure is not abandoned.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66605 and 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 11–30–93; operative 12–30–93 (Register 93, No. 49).
2. Amendment of first paragraph, subsection (b) and NOTE filed 5–24–96; operative 6–23–96 (Register 96, No. 21).

Article 2. Other Special Rules

§ 10710. Continuing Commission Jurisdiction.

Areas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered whether pursuant to a Commission permit or not.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66632(a), Government Code.

HISTORY

1. Renumbering and amendment of former Section 10710 to Section 10810, and new Section 10710 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

§ 10711. Cantilevering.

"Any other substance or material" or "any substantial change in use of any water" includes portions of any structure or any work that extends over any area within the Commission's jurisdiction by cantilevering or other similar engineering techniques.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66632(a), Government Code.

HISTORY

1. Renumbering and amendment of former Section 10711 to Section 10812, and new Section 10711 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 16.

§ 10712. Terms and Conditions for Subdivisions.

Subdivisions or other divisions of land requiring permits only because they constitute a substantial change in use as defined in Section 10125(b)(2) shall be subject to only those terms and conditions necessary to avoid potential adverse impacts on present or future public access or potential adverse impacts on the suitability of the site for a water–oriented priority land use designated pursuant to Government Code Section 66611, and such terms and conditions shall normally be limited to the following:

(a) realignment of the parcel to avoid the adverse impact;

(b) assuring notification to potential purchasers of the resulting parcels that future permits may be required from the Commission pursuant to Government Code Section 66632(a) and those permits may be subject to such terms and conditions as may be required to comply with the provisions of the McAteer–Petris Act and the San Francisco Bay Plan; and

(c) reservation of easements or similar devices to assure access by members of the public to and along the shoreline from the nearest public street.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 6632(f), Government Code; and Section 29506, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 10713. Compliance with Time Limits for Acting on Permit Applications When Commission Vote Requires Further Findings.

When the Commission has voted on an application for a Commission permit in such a way that requires the Commission to adopt findings at a future Commission meeting pursuant to Section 10514(e), the Commission shall meet the requirements contained in the McAteer–Petris Act and the Permit Streamlining Act for voting within certain time limits so long as the vote on the application occurs before those time limits expire even if the Commission votes on findings to support its action after those time limits expire.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65950, 65952 and 66632, Government Code; and Section 29520(a), Public Resources Code.

HISTORY

1. New section filed 1–12–89; operative 10–12–89 (Register 89, No. 43).

§ 10713.5. In–Bay Dredged Material Disposal Sites.

As used in the San Francisco Bay Plan and in these regulations, the designated in–Bay dredged material disposal sites are as follows. These designations do not preclude the need for a Commission permit to dispose of dredged material at the sites or substitute for the findings that may be required by the McAteer–Petris Act (Cal. Government Code Section 66600 et seq.) and the San Francisco Bay Plan.

(a) Alcatraz Disposal Site, consisting of a circular area of radius 1,000 feet with center located at latitude 37° 49′ 17″ N; longitude 122° 25′ 23″ W;

(b) San Pablo Bay Disposal Site, consisting of a rectangular area, 1,500 feet by 3,000 feet, with the long axis bearing 050 true, and center at latitude 38° 00′ 28″ N; longitude 122° 24′ 55″ W;

(c) Carquinez Strait Disposal Site, consisting of a rectangular area, 1,000 feet by 2,000 feet, long axis bearing 050 true, and center at latitude 38° 03′ 50″ N; longitude 122° 15′ 55″ W; and

(d) Suisun Bay Channel Disposal Site, consisting of a rectangular area, 500 feet by 11,200 feet situated parallel to the Suisun Bay Channel, and center at latitude 38° 03′ 15″ N; longitude 122° 05′ 06″ W.

(e) Middle Harbor at the Port of Oakland:

(1) For a project ("the project") that satisfies the following criteria:

(A) the purpose of the project is to enhance in–Bay habitat for plants, fish and wildlife;

(B) the project includes a one–time placement of dredged material, in the amount of approximately 5.8 million cubic yards, taken from the Oakland Harbor Navigation Improvement (–50 Foot) Project to create shallow water habitat;

(C) the project would be undertaken as specified in a plan ("the Plan") that is prepared by the U.S. Army Corps of Engineers and the Port of Oakland and approved by the Commission;

(D) the Plan specifies the following elements: (i) the restoration and enhancement performance criteria for the project including the creation of eelgrass and other shallow water habitat; (ii) the design required to restore or enhance–fish and wildlife habitat; (iii) the monitoring, adaptive management, and corrective actions that will be employed to ensure that the Plan's performance criteria are achieved; (iv) the periods of time needed to achieve the performance criteria, to monitor, and to employ adaptive management and corrective actions if needed; (v) the duties of the U. S. Army Corps of Engineers in implementing the Plan; (vi) the duties of the Port of Oakland once it takes over responsibility for the project from the U. S. Army Corps of Engineers; (vii) the management agency with wildlife management experience that will manage the Middle Harbor enhancement area once the project has been successfully completed; (viii) the management agency's duties as manager of the enhancement area; (ix) the method to determine the success or failure of the project through a performance criteria evaluation period; and (x) the process to determine the actions to be employed if the project fails to achieve the Plan's performance criteria within the specified time frames;

(E) the manner of implementing the Plan has been demonstrated to have a high likelihood of success in achieving the Plan's performance criteria within the specified time frames;

(F) the Port of Oakland makes a legally binding commitment to secure two permits from the Commission to fulfill its responsibilities as specified in the Plan: (i) at the time it assumes responsibility for the project from the U. S. Army Corps of Engineers at the commencement of the Plan's performance evaluation period; and (ii) at the conclusion of the Plan's performance evaluation period;

(G) the Port of Oakland provides the necessary legal and financial instruments to support its responsibilities as specified in the Plan; and

(H) the Project sponsors make a legally binding commitment to take action, as required by the Plan, if the project fails to achieve the Plan's performance criteria within the specified time frames; and

(2) Consisting of an area within the Middle Harbor bounded by the shoreline, wharf faces, and Middle Harbor Shoreline Park improvements which lie northeasterly of the following two courses;

Beginning at a point on the Southern Pacific Mole with Latitude 37°47′59.864″ N, Longitude 122°019′48.019″ W (NAD83) having grid coordinates of "N"=2118915.608 and "E"=6032967.336; thence North 72°04′00″ West 3435.03 feet to a point on the common boundary line between the city and county of San Francisco, Oakland and Alameda County, said point having coordinates of "N"=2119973.287 and "E"=6029699.201; thence North 05°15′46″ East 349.79 feet to the southwesterly corner of the 7th Street Terminal face of wharf having coordinates of "N"=2120353.305 and "E"=6029875.128.

NOTE: Authority cited: Section 29201(e), Public Resources Code; and Section 66632(f), Government Code. Reference: Section 29201(e), Public Resources

Code; Sections 66602, 66605, 66632(a), 66633, 66663.1 and 66663.2, Government Code; and the San Francisco Bay Plan.

HISTORY

1. New section filed 2–2–93; operative 3–4–93 (Register 93, No. 6).
2. Amendment of first paragraph, new subsections (e)–(e)(2), and amendment of NOTE filed 1–3–2001; operative 1–3–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 1).

Article 3. Fees for Commission Documents

§ 10714. Who Receives What Commission Documents for Free and Who Pays for What Commission Documents.

NOTE: Authority cited: Section 66632(f), Government Code; and section 29201(e), Public Resources Code. Reference: Sections 6257, 11125, 11125.1, 66632, 66637–66641.9 and 66652, Government Code; and Sections 29202, 29418, 29520 and 29601, Public Resources Code.

HISTORY

1. New article 3 (sections 10714–10716 filed 8–14–92; operative 9–14–92 (Register 92, No. 33).
2. Repealer filed 3–14–96; operative 4–13–96 (Register 96, No. 11).

§ 10715. Receipt of Commission Documents Pursuant to a Calendar Year Subscription.

NOTE: Authority cited: Section 66632(f), Government Code; section 29201(e), Public Resources Code. Reference: Sections 6257, 11125, 11125.1, 66632, 66637–66641.9 and 66652, Government Code; and Sections 29202, 29418, 29520 and 29601, Public Resources Code.

HISTORY

1. New section filed 8–14–92; operative 9–14–92 (Register 92, No. 33).
2. Editorial correction of subsection (f) and NOTE (Register 95, No. 41).
3. Repealer filed 3–14–96; operative 4–13–96 (Register 96, No. 11).

§ 10716. Receipt of Specific Commission Documents After Payment of Specific Cost.

NOTE: Authority cited: Section 66632(f), Government Code; section 29201(e), Public Resources Code. Reference: Sections 6257, 11125, 11125.1, 66632, 66637–66641.9 and 66652, Government Code; and Sections 29202, 29418, 29520 and 29601, Public Resources Code.

HISTORY

1. New section filed 8–14–92; operative 9–14–92 (Register 92, No. 33).
2. Editorial correction of NOTE (Register 95, No. 41).
3. Repealer filed 3–14–96; operative 4–13–96 (Register 96, No. 11).

Article 4. Dredging

§ 10720. Commission Procedure for Implementation of Individual In–Bay Dredged Material Allocations.

(a) The Commission shall commence a formal rulemaking process pursuant to the Administrative Procedures Act to determine whether or not to implement an individual in–Bay dredged material allocation–program either (1) within 45 days of the Executive Director's determination at the triennial reviews starting in 2004 that the average annual volume of dredged material disposed of over the preceding three–year period at the Alcatraz Island, San Pablo Bay, Carquinez Strait, and Suisun Bay Channel in–Bay disposal sites designated by the Commission exceeds the target volume specified in Section 10721 or (2) within 45 days of receipt of a written request to make such a determination from the Long Term Management Strategy Management Committee.

(b) The Commission shall also hold a public hearing prior to voting on whether or not to implement an individual in–Bay dredged material allocation and shall otherwise follow the formal rulemaking process pursuant to the Administrative Procedures Act when it determines whether or not to implement such a program.

(c) If an analysis of the factors affecting the need for allocations, including (1) the status of alternatives to in–Bay disposal and cooperative efforts to implement them, (2) exigencies that hamper the use of alternative sites, and (3) other relevant factors and any needed environmental documentation has not been submitted by the LTMS Management Committee as part of the written request or if in–Bay disposal volumes exceed the target volumes, then such an analysis will be prepared by the Commission staff prior to the public hearing on the matter.

(d) The Commission shall vote on whether or not to implement such a program within 60 days of the close of the public hearing. The Commission shall implement a program of individual in–Bay dredged material disposal allocations unless a majority of those Commissioners present and voting vote not to implement the program.

(e) The program will commence no later than six months after the Commission vote if the Commission vote results in a determination to implement an allocation program, provided that the Commission must also complete the formal rulemaking process and any allocation adopted by the Commission must be approved by majority vote as a regulation pursuant to the Administrative Procedures Act before the allocation can go into effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding s and Policy 1.

HISTORY

1. New article 4 (sections 10720–10729) and section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

§ 10721. Target Volumes.

(a) The target volume for the calendar years of 2001–2003 is an average of 3.05 million cubic yards per year.

(b) The target volume for the calendar years of 2004–2006 is an average of 2.66 million cubic yards per year.

(c) The target volume for the calendar years of 2007–2009 is an average of 2.28 million cubic yards per year.

(d) The target volume for the calendar years of 2010–2012 is an average of 1.89 million cubic yards per year.

(e) The target volume for the calendar years thereafter is an average of 1.50 million cubic yards per calendar year for each three–year period thereafter.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding s and Policy 1.

HISTORY

1. New section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

§ 10726. Small Dredger Exception.

Small dredgers are exempt from the individual in–Bay dredged material disposal allocation process, but they must still fully comply with all other McAteer–Petris and San Francisco Bay Plan policies regarding dredging and the disposal of dredged material.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding t and Policy 1.

HISTORY

1. New section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

§ 10727. Small Dredgers.

Small dredgers are defined to be project sponsors of dredging projects with a depth no deeper than –12 feet Mean Lower Low Water (not including over–depth dredging) and generating an average yearly volume of less than 50,000 cubic yards of material.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding t and Policy 1.

HISTORY

1. New section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

§ 10728. Termination of Individual Dredged Material Disposal Allocations.

(a) Within 45 days of either (1) a written determination by the Executive Director that the average annual volume of dredged material disposed of over the preceding triennial review period at all in–Bay disposal sites designated by the Commission no longer exceeds the target volumes

specified in Section 10721 or (2) the Long Term Management Strategy Management Committee recommends ending allocations, the Commission shall commence a formal rulemaking process pursuant to the Administrative Procedures Act to determine whether or not to end the imposition of individual dredged material disposal allocation. As part of that process, the Commission shall hold a public hearing.

(b) Within 60 days of the close of the public hearing, the Commission shall vote on whether or not to end the imposition of individual dredged material disposal allocations.

(c) The Commission shall end the imposition of individual dredged material disposal allocations unless the Commission determines by a majority of those Commission members present and voting not to end the imposition of individual dredged material disposal allocations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding s and Policy 1.

HISTORY

1. New section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

§ 10729. Reimplementation of Individual Allocations for the In–Bay Disposal of Dredged Material.

After terminating the imposition of individual dredged material disposal allocations, the Commission can reimpose individual dredged material disposal allocations only if the conditions specified in Section 10720 and 10721 exist and the Commission determines to impose the allocations pursuant to Section 10720, including the commencement and completion of a formal rulemaking process pursuant to the Administrative Procedures Act.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66652, Government Code; Section 29008, Public Resources Code; and *San Francisco Bay Plan*, Findings and Policies on Dredging, especially Finding s and Policy 1.

HISTORY

1. New section filed 6–28–2001; operative 7–28–2001 (Register 2001, No. 26).

Chapter 8. Amendments to Permits

Article 1. Determination of Materiality or Nonmateriality of a Proposed Amendment

§ 10800. Determination of Materiality or Nonmateriality of a Proposed Permit Amendment.

(a) The Executive Director shall decide whether a proposed amendment to a Commission permit is a material or a nonmaterial amendment.

(b) A nonmaterial amendment is an amendment that will not materially alter the project authorized by the Commission permit, such as but not limited to an amendment that qualifies under Sections 10601 or 10602 as a minor repair or improvement and that will not result in any reduction of public benefits.

(c) All other amendments are material.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(f), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment of subsection (b) and NOTE filed 6–16–2008; operative 7–16–2008 (Register 2008, No. 25).

Article 2. Amendments to Administrative Permits

§ 10810. Applications for and Action on Nonmaterial Amendments to an Administrative Permit.

(a) An application for a nonmaterial amendment to an administrative permit shall be made by letter. The application shall contain an adequate description of the proposed amendment and shall include appropriate maps and drawings.

(b) The Executive Director shall approve a nonmaterial amendment to an administrative permit only if he or she finds that the proposed amendment is nonmaterial and is consistent with either (1) California Government Code Sections 66600 through 66661, the San Francisco Bay Plan, California Public Resources Code Sections 21000 through 21177, and the Commission's Regulations if the Commission has jurisdiction under California Government Code Sections 66610 and 66632, (2) California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, California Public Resources Code Sections 21000 through 21177, and the Commission's regulations if the Commission has jurisdiction under California Public Resources Code Section 29101, 29500, and 29501 and the Commission has not certified a Suisun Marsh Local Protection Program or, (3) either California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan, or the certified Suisun Marsh Local Protection Program, in addition to California Public Resources Code Sections 21000 through 21177 and the Commission's regulations if the Commission has jurisdiction under Public Resources Code Section 29101, 298500, and 29501 and if the Commission has certified a Suisun Marsh Local Protection Program.

(c) When the Executive Director approves a nonmaterial amendment to an existing administrative permit, he or she shall not impose any new permit condition or modify any existing permit condition except when the new or modified condition either (1) relates solely to the non–material amendment, (2) is required by changes in the law or in regulations, or (3) is needed to make existing conditions consistent with the proposed amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10810(a)–(c) to Section 11000, renumbering and amendment of former Section 10810(d) to Section 11001, and renumbering and amendment of Section 10710 to Section 10810 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.
2. New subsection (c) filed 6–26–97; operative 7–26–97 (Register 97, No. 26).

§ 10811. Applications for Material Amendments to an Administrative Permit.

(a) If the project described in an application for a material amendment to an administrative permit would constitute a minor repair or improvement, the application shall be made in the same form as an application for an administrative permit as required by Section 10610.

(b) If the project described in an application for a material amendment to an administrative permit would not constitute a minor repair or im-

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provement, the application shall be made in the same form as an application for a major permit as required by Section 10310.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10811 to Section 11002, and new Section 10811 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10812. Criteria and Procedures for Processing a Material Amendment to an Administrative Permit.

The Executive Director shall process a properly filed application for an amendment to an administrative permit based on the same criteria and subject to the same procedures as these regulations require for the processing of an administrative permit if the project as proposed in the amendment qualifies for treatment as an administrative permit. However, if the project as proposed in the amendment does not qualify for treatment as an administrative permit, the Executive Director and the Commission shall process the application as being for a major permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10812 to Section 11003, and renumbering and amendment of Section 10711 to Section 10812 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.

Article 3. Amendments to Major Permits

§ 10820. Applications for Nonmaterial Amendments to Major Permits.

(a) An application for a nonmaterial amendment to a major permit shall be made by letter. The letter shall contain an adequate description of the proposed amendment and shall include appropriate maps and drawings.

(b) When the Executive Director approves a nonmaterial amendment to an existing major permit, he or she shall not impose any new permit condition or modify any existing permit condition except when the new or modified condition either (1) relates solely to the non–material amendment, (2) is required by changes in the law or in regulations, or (3) is needed to make existing conditions consistent with the proposed amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10820 to Section 11100, and renumbering and amendment of Section 10720 to Section 10820 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.
2. Amendment designating first paragraph as subsection (a) and adding new subsection (b) filed 6–26–97; operative 7–26–97 (Register 97, No. 26).

§ 10821. Procedure Depending on Whether an Amendment Is Material or Nonmaterial.

(a) The Executive Director shall deny an application for a nonmaterial amendment to a major permit if he or she believes the proposed amendment would constitute a material alteration of the project and shall notify the applicant in writing of his or her reasons for that belief.

(b) If the Executive Director denies an application for a nonmaterial amendment to a major permit because he or she believes it would result in a material alteration of the project, the applicant may appeal that determination by filing an application for a material amendment and note the fact of and the reason for the appeal.

(c) If the applicant appeals the determination of the Executive Director to the full Commission by filing an application for a material amendment, the Commission shall, prior to holding a public hearing on the application, determine by a majority vote of those present and voting whether or not the proposed change will result in a material alteration of the project.

(d) If the Commission determines that a proposed amendment will not result in a material alteration of the project, the Executive Director shall process the request as being for a nonmaterial amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10821 to Section 11101, and renumbering and amendment of Section 10723 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 73, No. 16.

§ 10822. Criteria and Procedures for Processing Nonmaterial Amendments to Major Permits.

The Executive Director shall approve a nonmaterial amendment to a major permit only if he or she finds that the amendment is consistent with California Government Code Sections 66600 through 66661 and the San Francisco Bay Plan if the Commission has jurisdiction under California Government Code Sections 66610 and 66632, with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan or the certified Suisun Marsh local protection program if the Commission has jurisdiction under California Public Resources Code Sections 29101, 29114, 29500, 29501, and 29505, with California Public Resources Code Sections 21000 through 21177, and with these regulations and will not result in a material alteration of the project.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10822 to Section 11102, and renumbering and amendment of Section 10722 to Section 10822 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 79, No. 29 and 73, No. 16.

§ 10823. Notice of Decision to Deny Nonmaterial Amendment.

If the Executive Director denies an application for nonmaterial amendment, he or she shall mail written notice of the denial and the reasons for it to the applicant within ten (10) days of the decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10823 to Section 11103, and renumbering and amendment of Section 10724 to Section 10823 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 79, No. 29 and 73, No. 16.

§ 10824. Applications for and Processing of Material Amendments to Major Permits.

An application for and the processing of a material amendment to a major permit shall be subject to the same requirements and procedures as an application for a major permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632, Government Code; and Section 29520, Government Code.

HISTORY

1. Repealer of former Section 10824, and renumbering and amendment of Section 10721 to Section 10824 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 79, No. 29 and 73, No. 16.

Chapter 9. Expansion of Existing Uses and Claims of Exemption

Article 1. Resolutions on Expansion of Existing Uses

(Government Code Section 66654)

§ 10900. Filing Deadline.

Any owner of property that is located within the shoreline band, a salt pond, or a managed wetland and that was devoted to a certain use or combination of uses on November 10, 1969 and who wants to file an application to expand those uses pursuant to Government Code Section 66654 shall file the application on or before November 10, 1971.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66654, Government Code.

HISTORY

1. Renumbering and amendment of Section 10830 to Section 10900 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

Article 2. Claims of Exemption

§ 10910. Claim Form.

All claims of exemption made pursuant to Government Code Section 66656 or pursuant to Public Resources Code Section 29507 shall be made on a claim form included in these regulations as Appendix J and Appendix K, respectively.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10910 to Section 11501, and renumbering and amendment of Section 10840 to Section 10910 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10911. Filing Deadline.

(a) Claims of exemption pursuant to Government Code Section 66656 shall be filed on or before April 1, 1974.

(b) Claims of exemption pursuant to Public Resources Code Section 29507 shall be filed on or before January 1, 1979.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10841 to Section 10911 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10912. Number of Copies of Form—Distribution.

Any person who submits a claim of exemption shall furnish at or before filing a signed original with all exhibits and four copies of the original and exhibits. The Executive Director shall distribute one copy to each of the following agencies:

(a) U.S. Army Corps of Engineers (San Francisco or Sacramento District);

(b) State Lands Commission;

(c) Deputy Attorney General assigned to the Commission; and

(d) the city, county, or city and county within which the property for which the claim is sought lies.

NOTE: Authority cited: Section 66632(f),Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10842 to Section 10912 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10913. Exhibits Illustrating Claim.

(a) The claimant shall furnish to the Commission at or before the time of filing drawings, maps, photographs, or other exhibits that the staff shall distribute with a staff summary that the staff shall prepare and which shall:

(1) illustrate precisely what is claimed as exempt; and

(2) indicate the relationship of the project claimed as exempt to nearby roads, to the shoreline as it presently exists and as it existed on September 17, 1965 if the claim is under Government Code Section 66656, to the boundaries of the Suisun Marsh if the claim is made under Public Resources Code Section 29507, to existing topographical features, and to any other significant natural or man–made features in the vicinity of the project.

(b) A claimant may either:

(1) provide a master copy of each exhibit, 8–1/2 by 11 inches in size, for reproduction by the Commission; or

(2) Two hundred (200) copies of each exhibit of a larger size if the claimant believes that the larger size would be more suitable to describe his or her claim.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10843 to Section 10913 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Amendment of subsection (a)(2) filed 5–24–96; operative 6–23–96 (Register 96, No. 21).

§ 10914. Other Substantiating Evidence.

At or before the time of filing, the claimant shall also furnish to the Commission the following:

(a) a legal description and a map showing property lines of all the property involved in the claim;

(b) a document evidencing the claimant's legal interest in the property involved in the claim;

(c) a copy of each permit, approval, disapproval, letter of permission, or other action taken by each governmental agency having jurisdiction over the project claimed to be exempt and from which approval of the project was or is required, and if a governmental agency having jurisdiction over the project took no action, a letter from that agency stating why it took no action;

(d) a map showing the physical relationship of the property and any area filled or to be filled to nearby confirmed survey lines, points, elevations, or other references, such as bench marks, triangulation points, U.S. pierhead and bulkhead lines, etc.;

(e) the earliest dated drawing depicting the project; and

(f) if the claim is being made under Government Code Section 66656, photographic or written evidence that shows that filling and/or diking had begun prior to September 17, 1965 and that indicates the amount of any fill that had been placed and the extent of any dikes that had been constructed, or if the claim is being made under Public Resources Code Section 29507, photographic or written evidence that substantial work had occurred and that substantial liabilities have been incurred in reliance on local permits prior to January 1, 1978.

NOTE: Authority cited: Sections 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10844 to Section 10914 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10915. When a Claim of Exemption Is Filed.

A claim shall be filed when the following has occurred:

(a) the Executive Director has determined that the completed claim form, supporting documentation, and exhibits comply with these regulations; and

(b) the claim form, supporting documentation, and exhibits have been stamped "Filed BCDC" with the date of filing.

NOTE: Authority cited: Sections 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10845 to Section 10915 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 10916. Procedures.

(a) The provisions of Sections 10351–353, 10380–381, 10400–402, 10410–412, 10420–422, 10430–431, 10500–502, 10504–505, and 10510–514, relating to notice of hearing, hearing procedures, voting, and other similar matters, shall apply to claims of exemption except where those provisions are inconsistent with express provisions of this Article.

(b) For the purposes of this Article, the words "claim" and "claimant" shall be substituted for the words "application" and "applicant," respectively, as they are used in the regulations to which paragraph (a) refers.

NOTE: Authority cited: Sections 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10846 to Section 10916 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No.29.

§ 10917. Commission Determination and Findings.

(a) After hearing the staff recommendation and any subsequent discussion, the Chair shall entertain a motion to act on the claim.

(b) In any determination the Commission makes concerning a claim of exemption, it shall adopt a statement of findings and declarations to support the action it takes.

(c) If the Commission action adopts the Executive Director's recommendation, its findings and declarations shall be those contained in the Executive Director's recommendation. If the Commission action differs

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from the Executive Director's recommendation, those Commissioners who voted consistent with the Commission determination shall by majority vote adopt the necessary findings and declarations.

NOTE: Authority cited: Sections 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code; *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 858–60; and *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513–17.

HISTORY

1. Renumbering and amendment of Section 10847 to Section 10917 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10918. Effect of Grant of Exemption.

A Commission determination that approves all or part of a claim of exemption shall constitute an acknowledgment that all or part of the project is exempt from the permit requirements of Government Code Section 66632 or of Public Resources Code Sections 29500 through 29524, as applicable, provided that no substantial change may be made in any such project without a permit from the Commission and provided that the claim shall not cover any subsequent maintenance work on the project.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10848 to Section 10918 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10919. Effect of Denial of Exemption.

A Commission determination that denies all or part of a claim of exemption shall constitute an authorization to the Executive Director to take any appropriate action to secure compliance with Government Code Section 66632 or with Public Resources Code Sections 29500 through 29504, as applicable.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; and Section 29507, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10849 to Section 10919 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 10920. Effect of Transfer of Property on Claim of Exemption.

An exemption that the Commission grants shall be transferable and shall remain in full effect after any conveyance of the property that is the subject of the exemption.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507(c), Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; Section 29507, Public Resources Code; and *People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 548.

HISTORY

1. Repealer and new section filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.
2. Amendment of section and NOTE filed 2–26–98; operative 3–28–98 (Register 98, No. 9).

§ 10921. Abandonment of an Exemption.

Failure to put any land, water, or structure to the use for which the Commission issued a claim of exemption for a period of two (2) years shall create a presumption that the structure or the use of the land, water, or structure has been abandoned, so that the exemption no longer applies to the abandoned structure or use, provided that the Commission may determine an exemption has not been abandoned despite the non–use of any land, water, or structure for a period of two (2) years if it resolves that it was physically or legally impossible to make such use of the land, water, or structure within the two (2) year period or that the holder of the exemption had made reasonable and good–faith efforts to put the land, water, or structure to such exempted use during the period of non–use.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29507, Public Resources Code. Reference: Sections 66632.1, 66655 and 66656, Government Code; Section 29507, Public Resources Code; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 798; *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 286; and *Gerhard v. Stephens* (1968) 68 Cal.2d 864.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Chapter 10. Amendments to the San Francisco Bay Plan or the Suisun Marsh Protection Plan and Other Planning Matters

Article 1. Plan Amendments

§ 11000. Information Required to Consider Plan Amendment.

If anyone other than the Commission or the Executive Director proposes an amendment or other change either to the San Francisco Bay Plan, to a Commission special area plan or total design plan, to the San Francisco Bay Area Seaport Plan, to the Suisun Marsh Protection Plan of 1977, or to any other plan administered by the Commission, the Commission shall consider the proposal only after the agency, organization, or individual who proposes the amendment or change has submitted a completed and executed copy of the application form that these regulations contain as Appendix G and, in addition, has met the requirements of section 11008.

NOTE: Authority cited: Sections 66632(f) and 66651, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Section 29202, Public Resources Code.

HISTORY

1. Amendment of article heading and renumbering and amendment of former section 11000 to sections 11001 and 11002 and new section 11000 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
2. Amendment filed 12–1–92; operative 12–31–92 (Register 92, No. 49).
3. Editorial correction of printing error deleting obsolete article heading and amending HISTORY 1 (Register 94, No. 22).

§ 11001. Preparation, Contents and Circulation of Draft Adequate Descriptive Notice.

(a) If the Commission or the Executive Director proposes an amendment or other change either to the San Francisco Bay Plan, to a Commission Special area plan or total design plan, to the San Francisco Bay Area Seaport Plan, or to the Suisun Marsh Protection Plan or if anyone else proposes such an amendment by submitting a fully completed application form as required by section 11000, the Executive Director shall prepare a draft descriptive notice.

(b) The draft descriptive notice shall indicate the scope of the proposed amendment and shall recommend a date for public hearing.

(c) At least 10 days prior to the meeting at which the Commission will determine whether or not to proceed with a proposed amendment or other change to the San Francisco Bay Plan, to a Commission special area plan or total design plan, to the San Francisco Bay Area Seaport Plan, or to the Suisun Marsh Protection Plan, or any other plan administered by the Commission, the Executive Director shall mail to all Commission members a copy of the draft descriptive notice and any other materials that the Executive Director believes that the Commission will need to understand fully the proposed amendment.

NOTE: Authority cited: Sections 66632(f) and 66651, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Section 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10810(a)–(c) to section 11000 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 11001 to section 11004 and renumbering and amendment of former section 11000(a)–(c) to section 11001 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
3. Editorial correction of subsection (c) (Register 95, No. 41).
4. Editorial correction of subsection (a) (Register 2002, No. 24).

§ 11002. Commission Determination to Initiate Amendment Process; Adoption and Mailing of Descriptive Notice.

(a) When the Commission receives the draft descriptive notice, it may invite written comment or hold a public hearing and shall thereafter determine by a majority vote of those present and voting whether it wants to initiate the amendment process.

(b) If the Commission determines to initiate the amendment process, the Commission shall make any changes in the notice that it deems appropriate and shall also see the date for the public hearing on the proposed amendment.

(c) The descriptive notice as adopted by the Commission after having made any appropriate changes shall be the "adequate descriptive notice" that Government Code Section 66652 requires.

(d) At least 30 days prior to the date of the public hearing on the proposed amendment, the Executive Director shall mail by first class mail a copy of any descriptive notice that the Commission has approved to all Commissioners and Alternates, to each of the six (6) governmental agencies listed in Section 10360, to all interested agencies, organizations, and individuals, to all agencies that have jurisdiction by law with respect to any proposed activity that is listed in the notice, and to any other person, agency, or organization who requests such notice in writing.

NOTE: Authority cited: Sections 66632(f) and 66651, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(C) and 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11002 to section 11003 and renumbering and amendment of former section 11000(d)–(f) to section 11002 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
2. Amendment of subsection (d) and NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

§ 11003. Staff Planning Report.

(a) Not less than thirty (30) days prior to the initial public hearing on the proposed amendment, the Executive Director shall distribute a staff planning report on the proposed amendment to all persons, agencies, and organizations who received a descriptive notice of the proposed amendment and to anyone else who requests such in writing.

(b) The staff planning report shall contain:

(1) the background of the proposed amendment, the name of the agency, organization, or individual who proposed the amendment, and the reason for the proposal;

(2) a description of the proposed amendment that shall include the specific language, map designation, or other change proposed, and, for any change in any plan map, graphic exhibits that indicate the precise location and nature of the proposed change;

(3) a statement describing the effect the proposed change would have on any existing finding, policy, or map designation contained in the San Francisco Bay Plan, a Commission special area plan, the San Francisco Bay Area Seaport Plan, the Suisun Marsh Protection Plan, or any other plan administered by the Commission;

(4) a statement describing the consistency of the proposed change with the findings and declarations of policy in the McAteer–Petris Act (California Government Code Sections 66600 through 66694) if an amendment to the San Francisco Bay Plan is proposed;

(5) a statement describing the consistency of the proposed change with the findings and declarations of policy contained in the Suisun Marsh Preservation Act of 1977 (California Public Resources Code Sections 29000 through 29612) if an amendment to the Suisun Marsh Protection Plan is proposed;

(6) an environmental assessment, which shall either (i) state that the proposed amendment will have no significant adverse environmental impacts or (ii) shall describe any possible significant adverse effects that the proposed amendment would have on the environment and shall describe any public benefits of the proposed amendment, any feasible mitigation measures that would lessen the significant adverse environmental impact(s) and shall evaluate any feasible alternatives to the change;

(7) a summary of written comments received following distribution of the descriptive notice but at least 10 days prior to the mailing of the staff planning report and responses to those comments;

(8) a summary of and responses to all significant environmental points raised up to the time the staff planning report is mailed;

(9) if the proposed amendment involves a change in a water–oriented priority land use boundary description, a draft revision of such boundary description; and

(10) a preliminary staff recommendation on the proposed amendment.

NOTE: Authority cited: Sections 66632(f), 66651 and 66652, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(D) and 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10811 to section 11002 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering and amendment of former section 11002 to section 11003 and renumbering of former section 11003 to section 11005 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
3. Amendment of subsections (a)(3), (a)(4) and (a)(6), new subsection (a)(8), subsection renumbering, amendment of newly designated subsection (a)(9) and amendment of NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

§ 11004. Public Hearing(s).

(a) The Commission shall hold the initial public hearing not less than thirty (30) days following the mailing of the descriptive notice that the Commission adopted.

(b) The Executive Director may delay the date or time and change the place of the public hearing on a proposed plan amendment without the Commission having to amend the descriptive notice by giving notice of the delay or change in the regular meeting notice for the meeting at which the public hearing was scheduled before the change. The staff shall mail such notice of delay or change to all persons and entities to which the staff mailed a descriptive notice.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Section 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10810(d) to Section 11001 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 11001 to section 11004 and renumbering of former section 11004 to section 11006 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).

§ 11005. Staff Planning Recommendation.

(a) Following the final public hearing on the proposed amendment, the staff shall prepare a staff planning recommendation on the proposed amendment.

(b) The staff planning recommendation shall contain:

(1) a summary of comments and responses to all comments on the proposed amendment received either in writing prior to the close of the public comment period or at the public hearing which the staff planning report did not already summarize and respond to;

(2) a summary of and responses to all significant environmental points raised but not summarized and reponded to in the staff planning report;

(3) any revisions to the Executive Director's initial assessment and analysis of the environmental effects of the proposed amendment;

(4) a final recommendation for Commission action on the proposed amendment, which may include approval, modifications, or disapproval of the proposed amendment;

(5) if the proposed amendment involves a change in a water–oriented priority land use boundary description, a recommendation for the precise wording of such change; and

(6) if the Executive Director recommends approval of the amendment in original or modified form, a draft resolution of adoption that conforms to the provisions of Section 11004.

(c) The staff shall mail by first class a copy of the staff planning recommendation to all agencies, organizations, and individuals who received a staff planning report and to anyone else who requests in writing to receive a copy of the recommendation. Such mailing shall take place not

less than six (6) days prior to the date of the scheduled Commission action on the proposed amendment.

(d) If the staff recommends an amendment that is substantially different from the amendment proposed in the staff planning report, the Executive Director shall prepare and distribute a new staff planning report in conformity to Section 11003 and the Commission shall hold another public hearing no earlier than thirty (30) days after the distribution of the new staff planning report. The Commission shall wait to consider or vote on the Executive Director's recommendation at least fourteen (14) days following the holding of the additional public hearing.

(e) If the Commission does not determine that the staff is recommending an amendment that is substantially different from the amendment proposed in the staff planning report, the amendment being recommended shall be conclusively presumed not to be substantially different.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 21080.5(d)(2)(D) and 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10812 to section 11003 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 11003 to section 11005 and renumbering of former section 11005 to section 11007 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
3. New subsection (b)(2), subsection renumbering, amendment of subsections (d) and (e) and amendment of NOTE filed 2–16–2007; operative 3–18–2007 (Register 2007, No. 7).

§ 11006. Contents of a Resolution of Approval.

A resolution of approval of a proposed amendment to the San Francisco Bay Plan, a special area plan, or the Suisun Marsh Protection Plan either in original or modified form shall contain the following elements:

(a) if the resolution concerns a proposed amendment to the Bay Plan or a special area plan, a statement that the amendment conforms to all relevant policies of California Government Code Sections 66600 through 66661;

(b) if the resolution concerns a proposed amendment to the Suisun Marsh Protection Plan, a statement that the amendment conforms to all relevant policies of California Public Resources Code Sections 29000 through 29612;

(c) a statement that the amendment either will have no significant adverse impacts on the environment or that the amendment incorporates feasible alternatives or feasible mitigation measures, if any exist, that will substantially lessen the significant adverse impacts;

(d) the text and all necessary drawings, maps, exhibits, etc., of the amendment; and

(e) specific findings of fact that will support the legal conclusions contained in paragraphs (a) and (b) of this section.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Section 29202, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Renumbering of former section 11004 to section 11006, filed 9–5–91; operative 10–7–91 (Register 92, No. 3).

§ 11007. Notice of Adopted Amendments.

(a) The Executive Director shall file a notice of the adoption of a plan amendment with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

(b) The Executive Director shall also make every reasonable effort to assure that all interested persons receive notice of the adopted amendment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632 and 66652, Government Code; and Sections 21080(d)(2)(v) and 29202, Public Resources Code.

HISTORY

1. Renumbering and amendment of section 10814 to section 11005 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.
2. Renumbering of former section 11005 to section 11007 filed 9–5–91; operative 10–7–91 (Register 92, No. 3).

[The next page is 528.3.]

Appendix G

Application Form for Amendments to San Francisco Bay Conservation and Development Commission Plans

Please use this form to apply for an amendment to any of the following San Francisco Bay Conservation and Development Commission plans (please check the plan subject to the application):

- ☐ San Francisco Bay Plan
- ☐ Suisun Marsh Protection Plan
- ☐ San Francisco Bay Area Seaport Plan
- ☐ San Francisco Waterfront Special Area Plan
- ☐ San Francisco Waterfront Total Design Plan
- ☐ South Richmond Shoreline Special Area Plan
- ☐ Benicia Waterfront Special Area Plan
- ☐ Richardson Bay Special Area Plan
- ☐ Other Plan, Specify _____

In order that the Commission may consider a proposed amendment to the *San Francisco Bay Plan, Suisun Marsh Protection Plan, San Francisco Bay Area Seaport Plan, San Francisco Waterfront Special Area Plan, San Francisco Waterfront Total Design Plan, South Richmond Shoreline Special Area Plan, Benicia Waterfront Special Area Plan, or Richardson Bay Special Area Plan*, or other plan administered by the Commission, this application must be completed, executed, and submitted to the Commission. Completion of this form will help assure that the Commission is provided the necessary information to fully consider and act on a plan amendment or change request.

Applicant Information ☐ Individual ☐ Agency ☐ Organization

The Applicant is an (please check:)

Applicant: _____

Name: _____

Address: _____

City, State, Zip: _____

Telephone: ( ) _____

Facsimile: ( ) _____

Co–Applicant: (if any): _____

Name: _____

Address: _____

City, State, Zip: _____

Telephone: ( ) _____

Facsimile: ( ) _____

Representative's Authorization

If the applicant will be represented by another party in the plan amendment application process, please complete the following:

I hereby authorize _____ to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Applicant Date

_____
Printed Name and Title (if applicable) of Applicant

I hereby authorize _____ to act as my representative and bind me in all matters concerning this application.

I hereby authorize _____ to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Co–Applicant Date

_____ _____
Printed Name and Title (if applicable) of Co–Applicant Date

If the applicant is a public agency, attach a resolution from the highest policy board of the public entity authorizing the request to be made and delegating to the person signing this application the authority to represent and bind the public agency for representations and information submitted as part of this application. For a city that submits an application, the highest policy board is the city council. For a county that submits an application, the highest policy board is the county board of supervisors.

Specific Information

On a *separate sheet(s) of paper*, please provide the information requested below. If an item is not applicable to the proposed amendment, mark *NA*.

1. **Property Ownership.** List the owner(s) addresses, and Assessor's parcel numbers of all property subject to the amendment request.

2. **Specific Reasons for Requesting the Amendment.** State the background and specific reasons for requesting the proposed amendment.

3. **Text of Proposed Amendment.** If the proposed change is to any text or map notes, provide the specific language change proposed to the text of the plan or plan map note.

4. **Graphic Change in a Plan Map or Plan Diagram.** If the proposed amendment involves a graphic change to a map, diagram, or figure, identify the map, diagram, or figure to be changed and provide a reproducible exhibit that shows precisely the proposed change.

5. **Change in Use of Water–Oriented Priority Use Areas.** If a change in use is proposed for any water–oriented priority use area or the Suisun Marsh water–related industry reserve area, describe how the proposed amendment is consistent with all applicable local land use plans, policies, ordinances, and regulations.

6. **Change in Boundaries of Water–Oriented Priority Use Areas.** If a change in the boundaries of any water–oriented priority use area or the Suisun Marsh water–related industry reserve area is proposed, provide an exact description of the proposed change in the location of the boundaries and the names and addresses of the owners of property located within 300 feet of the proposed boundary.

7. **Change in a Water–Oriented Recreation Priority Use Area.** If any reduction to or elimination of a privately–owned water–oriented *Waterfront Park, Beach* priority use area is proposed where the area was so designated because of contemplated public acquisition, provide a written statement from an authorized representative of the public agency(ies) with park and recreation use development and operation jurisdiction over the area that the agency(ies) do(es) not contemplate acquiring the site for the designated priority use within three years commencing January 1 of the year following the anticipated action by the Commission on the proposed amendment.

8. **Consistency with McAteer–Petris Act.** For proposed changes to the *San Francisco Bay Plan, San Francisco Bay Area Seaport Plan*, or a Commission special area plan or total design plan, provide a description of how the proposed amendment is consistent with the findings and declaration of policy of the McAteer–Petris Act (Government Code Sections 66600 through 66661).

9. **Consistency with Suisun Marsh Protection Plan.** For proposed changes to the *Suisun Marsh Protection Plan*, provide a statement that describes how the proposed amendment is consistent with the findings and declaration of policy contained in the Suisun Marsh Preservation Act of 1977 (Public Resources Code Sections 29000 through 29612).

10. **Effect on Existing Findings, Policies, and Map Designations.** Provide a statement describing the effect of the proposed plan change would have all existing findings, policies, and map designations of the plan proposed to be amended or changed.

11. **Description of Applicable Local Plans, Policies, and Zoning.** Identify and briefly describe the local plans, policies, and zoning applicable to any areas affected by the application with a brief history indicating what changes to local plans, policies, and zoning have occurred within three years prior to the date of the application.

Environmental Determination

Provide a statement with supporting reasons why the applicant believes: (1) that the proposed amendment is statutorily or categorically exempt from the necessity of determining whether the proposed amendment may have a significant adverse impact on the environment; (2) that the proposal will not have any significant adverse impact on the environment; or (3) that the proposed amendment may have one or more substantial adverse impacts on the environment. If the applicant states that the proposed amendment may have a significant adverse impact on the environment, fully discuss the impact(s) and its(their) effect(s) on the environment and the mitigating measures that can be taken to lessen the impact.

Additional Information

Additional information, exhibits, or other material shall be provided to the Commission upon request of the Commission's Executive Director if he or she determines that such information, exhibits, or other material is reasonably necessary for the Commission to fully understand the proposed plan amendment or change and its impacts.

HISTORY

1. New Appendix G filed 9–5–91; operative 10–7–91 (Register 92, No. 3).
2. Editorial correction of "Environmental Determination" in Appendix G (Register 95, No. 41).

§ 11008. Payment of Costs of Processing of an Amendment to a Commission Planning Document.

(a) Whenever a person, agency, or organization other than the Commission or the Executive Director proposes that the Commission amend any of its planning documents other than deleting a park priority use designation from private property based on an alleged lack of substantial probability that a public entity will be committed to the acquisition of the property within three years beginning on January 1 of the year following the Commission's consideration of the proposed amendment, that person, agency, or organization shall be responsible for paying the Commission's full costs of processing and acting on the application as determined pursuant to this section, provided that the total amount of payments required shall not exceed one hundred and twenty percent (120%) of the estimated total cost as determined by the Commission staff.

(b) At the time of submitting the application required by section 11000, any person, agency, or organization required by section 11008(a) to pay for the cost of amending the Commission planning document shall submit to the Commission a cashier's check in the amount of $5,000 payable to the Commission and shall execute an agreement that obligates the person, agency, or organization to pay all such Commission costs of processing and acting on the application as determined pursuant to this section.

(c) The agreement required by Section 11008(b) shall include in it an estimate of the total cost of the Commission's processing and acting on the application, including the direct costs of all Commission staff time, a reasonable figure for staff overhead, and all consultant costs. The amendment applicant shall not be responsible, and the agreement shall so state explicitly, for the payment of any charges in excess of one hundred and twenty percent (120%) of the estimated cost contained in the agreement.

(d) Before the Commission determines to commence processing the amendment request by adopting and issuing the descriptive notice, the Commission may at the request of the amendment applicant modify downward the estimated total cost of the Commission's processing and acting on the amendment application. If the Commission modifies the estimated cost downward, the agreement between the Commission and the amendment applicant shall be modified to reflect the modified estimated cost.

(e) After the Commission commences processing an application to amend a Commission planning document, the Commission shall submit on a quarterly basis to the amendment applicant a bill for the actual costs incurred, including overhead, by the Commission, the Commission's staff, and the Commission's consultants during the preceding quarter.

(f) The applicant for the plan amendment shall pay the bill received pursuant to section 11008(e) within 30 days of receipt of the bill. Failure to make full payment on any such bill within 30 days of its receipt shall allow the Commission and the staff to discontinue work on the application until such complete payment has been made.

(g) After either (1) the Commission and its staff completes all work, including voting, on a pending plan amendment application, (2) the applicant formally withdraws the pending application, or (3) the applicant abandons the application, the Commission shall apply the $5,000 deposit to the remaining unpaid costs for processing the application. If any of the $5,000 remains after paying all of the unpaid costs of processing the application, the Commission shall refund the remaining funds to the applicant. If the unpaid costs of processing the application exceed $5,000, the Commission shall within 30 days bill the applicant for all of those costs that exceed the $5,000 deposit.

(h) If the Commission abandons its consideration of an application to amend a Commission planning document pursuant to section 11008(i) or otherwise fails to act on the application, the person, agency, or organization who submitted the amendment application shall remain responsible for paying all of the costs, including overhead, of processing and acting on the application that the Commission incurred prior to the abandonment or failure to act.

(i) Abandonment of a plan amendment application shall occur only when the Executive Director or Commission concludes that no reasonable probability exists that the amendment applicant intends to pursue the application based on all of the circumstances that surround the pending plan amendment application.

(j) Nonpayment of an overdue bill for prior costs associated with a plan amendment application for a period of three months shall constitute evidence that a plan amendment applicant has abandoned the application unless the applicant submits written evidence to the contrary and the Executive Director concludes that the applicant does not intend to abandon the application and that reasonable grounds exist to explain the nonpayment.

(k) A plan amendment applicant may at any time appeal from the amount of funds stated as due in a bill from the Commission staff by submitting in writing within 10 days of receipt of the bill a statement of precisely what the applicant believes is incorrect about the bill, what the amendment applicant believes the correct bill should be, and all documentation that the amendment applicant wants to submit to support his or her contention(s). Thereafter, the Executive Director shall determine within 10 days of receipt of the written appeal whether to grant or to deny the appeal in whole or in part. If the amendment applicant is still not satisfied with the proposed bill after the Executive Director has ruled on the appeal, the applicant may meet with the Chairman to try to resolve the dispute and ultimately present his or her claim to the Commission. The Commission shall be the final arbiter of the fee that the amendment applicant must pay.

NOTE: Authority cited: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66652, Government Code; and Sections 29202 and 29418, Public Resources Code.

HISTORY

1. New section filed 12–1–92; operative 12–31–92 (Register 92, No. 49).

[The next page is 528.5.]

Article 2. Other Planning Matters

§ 11020. Other Planning Matters.

To the extent that other planning matters, pursuant to Government Code Section 66630 and Government Code 66658 require environmental documentation pursuant to the California Environmental Quality Act, the procedures outlined in this chapter for plan amendments, including the preparation of a staff planning report, the holding of a public hearing, and the preparation and vote on a staff planning recommendation, shall be followed with the following exceptions:

(a) the staff planning report and the staff planning recommendation may be combined into one document, entitled "Joint Staff Report and Recommendation"; and

(b) if the staff prepares a joint report and recommendation, the staff shall mail the document at least thirty (30) days prior to the public hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66630 and 66658, Government Code; and Section 29201(f), Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11020 to Section 11320, and new Section 11020 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11021. Power Plant Siting.

The Commission has designated the following areas within its jurisdiction where the siting of thermal power plants that would generate 50 or more megawatts of power, and some or all ancillary facilities, would be precluded or limited.

(a) Full Designation: the following areas are fully designated as non–siting areas where neither power plants nor ancillary facilities may be constructed, except for ancillary facilities that the Commission determines would have no substantial adverse environmental effects and would not conflict with priority use areas identified in the *San Francisco Bay Plan*.

(1) Existing and proposed public parks;

(2) Existing and proposed public and private wildlife refuges;

(3) Existing and proposed Bay habitat restoration sites;

(4) Wildlife Priority Use Areas;

(5) Waterfront Park or Beach Priority Use Areas, including marinas, fishing piers and boat launching ramps;

(6) Suisun Marsh Primary Management Area;

(7) Tidal marshes, tidal flats and managed wetlands;

(8) Riparian vegetation;

(9) Habitat of species that are listed by a fish and wildlife management agency as threatened or endangered; and

(10) Marine mammal haul–out and pupping sites.

(b) Partial Designation: the following categories are partially designated as non–siting areas where the siting of power plants and ancillary facilities is limited, precluded or conditioned.

(1) Category A

(A) Category A includes the following areas designated by the *San Francisco Bay Plan*.

(i) Water–related industry priority use areas;

(ii) Port priority use areas; and

(iii) Airport priority use areas.

(B) A power plant and any ancillary facility may be located within a Category A area when the project would not preclude or adversely affect the existing or future use of the priority use area for its primary purpose.

(2) Category B

(A) Category B includes the following areas:

(i) The Commission's Bay and certain waterway jurisdiction other than the areas identified in subsections (a) and (b)(3);

(ii) The Suisun Marsh Secondary Management Area;

(iii) Salt ponds; and

(iv) Existing and proposed public access areas, including the San Francisco Bay Trail, when alternative access is provided during construction and the original access is restored thereafter.

(B) The following ancillary facilities may be located within Category B areas. Other ancillary facilities may be located within Category B areas when the Commission determines they would have no substantial adverse environmental effects and would not conflict with priority use areas identified in the *San Francisco Bay Plan*. Power plants may not be constructed within these areas.

(i) Underground or underwater electric transmission lines;

(ii) Intake or discharge lines and structures for cooling systems;

(iii) Underground or underwater fuel pipelines; and

(iv) Underground or underwater steam pipelines.

(3) Category C

(A) Category C includes the following areas identified by the McAteer–Petris Act, the *San Francisco Bay Plan* and the *Suisun Marsh Protection Plan* and not otherwise designated in subsections (a) and (b)(2).

(i) Subtidal areas;

(ii) Migratory fish routes;

(iii) Spawning areas; and

(iv) Nursery sites for juvenile fish and other aquatic organisms.

(B) The following ancillary facilities may be located within Category C areas when the project would not adversely affect migratory fish, their migration routes, and their spawning and nursery sites. Other ancillary facilities may be located within Category B areas when the Commission determines that the facilities would not adversely affect migratory fish, their migration routes and their spawning and nursery sites, would have no other substantial adverse environmental effects, and would not conflict with priority use areas identified in the *San Francisco Bay Plan*. Power plants may not be constructed within these areas.

(i) Overhead electric transmission lines;

(ii) Intake or discharge lines for cooling systems that pass completely through the area;

(iii) Underground or underwater fuel pipelines; and

(iv) Underground or underwater steam pipelines.

(c) Definitions. For the purposes of this section, the following definitions apply:

(1) "Proposed parks," "proposed wildlife refuges," "proposed Bay habitat restoration sites" and "proposed public access areas" mean parks, wildlife refuges, restoration sites and public access areas for which funding has been acquired.

(2) "Ancillary facility" means a facility that will be required in order to generate and transmit power from a power plant. Such facilities include transmission lines, intake and discharge lines and structures, and fuel and steam pipelines.

(d) Despite the provisions of subsections (a) and (b), the Commission may advise the California Energy Commission that it does not object to a proposed project when either:

(1) Due to the designations in this section there is a lack of areas available for the siting of a power plant in which case the Commission shall apply the following order of priorities for identifying the most appropriate sites:

(A) The project would expand facilities within existing power plant sites;

(B) The project would develop a new site adjacent to an existing power plant site;

(C) The project would develop a new site in otherwise undesignated areas; or

(D) The project would develop a new site in partially designated areas only after a determination that: (i) the Bay site has greater relative merit than available inland sites; (ii) the proposed development is consistent with the primary use of the land; (iii) there will be no substantial adverse environmental effects; (iv) approval by any public agency having ownership or control of the land is obtained; and (v) opportunities consistent with the first four priorities are not feasible; or

(2) The project would avoid all adverse effects on the resource areas and would otherwise comply with the Commission's laws and policies.

NOTE: Authority cited: Sections 66632(f) and 66645, Government Code; and Section 29201(e), Public Resource Code. Reference: Section 66645, Government Code; the *San Francisco Bay Plan*; the *Suisun Marsh Protection Plan*; and Sections 25507 and 25523, Public Resource Code.

HISTORY

1. New section filed 5–5–2003; operative 6–4–2003 (Register 2003, No. 19).

Chapter 11. Special Area Planning

§ 11100. Definition and Effect of a Special Area Plan.

(a) A "special area plan" is an amendment to the San Francisco Bay Plan that applies any or all policies of the Bay Plan in greater detail to the geographic area covered by the special area plan.

(b) A proposed special area plan shall have no force or effect on the Commission. After the Commission has adopted a special area plan as an amendment to the Bay Plan, it shall have the full force and effect of the San Francisco Bay Plan.

(c) Adoption of a special area plan shall not alter the requirement established in Government Code Section 66632 that a permit must be secured from the Commission for any development within its jurisdiction.

(d) A special area plan shall normally be prepared by a "Joint Special Advisory Committee" which includes member(s) of local government, member(s) of the Commission, member(s) appointed by local government to represent local interests, and member(s) appointed by the Commission to represent regional interests. The size and membership will vary depending on the geographical area, but its size, composition, authority, chairman, and vice chairman shall be agreed upon by separate resolution of the Commission and local government prior to commencement of special area planning. No action taken by the joint special advisory committee is binding on the Commission or local government.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: San Francisco Bay Plan, P. 39, 41.

HISTORY

1. Renumbering and amendment of Section 10820 to Section 11100 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 80, No. 48.

§ 11101. Special Area Planning Procedures.

(a) The Commission, the Executive Director, a local government, or any other person may propose that the Commission develop a special area plan.

(b) After such a proposal has been made, the Executive Director shall prepare a brief summary and report on the proposal that shall include the following information:

(1) the boundaries of the area involved;

(2) the issues and concerns to be addressed in the planning process and the reasons for developing a special area plan;

(3) the estimated cost and personnel needed to complete the study and the source of the funds needed to pay for it;

(4) an estimate of the amount of time that it would take to complete the special area planning process;

(5) whether the Executive Director recommends that the Commission develop a special area plan;

(6) whether the Executive Director recommends that a joint special advisory committee be appointed to assist in preparing the special area plan and the recommended membership of any such advisory committee; and

(7) any other information the Executive Director deems appropriate.

(c) The Executive Director shall mail the report and, if the Executive Director recommends that the Commission develop a special area plan, a draft resolution that complies with Section 11102 to the Commission, to all interested parties, to all affected local jurisdictions, and to all other persons who have requested such mailing in writing.

(d) The Executive Director shall schedule a public hearing prior to the Commission's determination whether or not to develop a special area plan. The public hearing shall occur no earlier than ten (10) days after the Executive Director mails the report on the proposal to develop a special area plan.

(e) The Commission shall determine whether to develop a special area plan by majority vote at any time after the public hearing. If the Commission determines that it wants to develop a special area plan, it shall make that determination by resolution that complies with the requirements of Section 11102.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: San Francisco Bay Plan, P. 39, 41.

HISTORY

1. Renumbering and amendment of Section 10821 to Section 11101 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 80, No. 48 and 79, No. 29.

§ 11102. Contents of a Resolution to Develop a Special Area Plan.

A Commission resolution to develop a special area plan shall contain the following information:

(a) the boundaries of the area to be studied;

(b) the reasons for developing a special area plan and the purpose of the special area plan;

(c) any specific issues that the Commission wants the special area planning to address;

(d) the procedures to be used to prepare the special area plan, specifically addressing who will do the work and any special procedures that will be used to assure participation by any interested or affected persons, e.g., the holding of a public hearing, the use, membership, and representation of a joint special advisory committee, etc.;

(e) any conditions that the Commission believes appropriate to the proposed special area planning; and

(f) any other matter that the Commission deems appropriate to the proposed special area planning.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: San Francisco Bay Plan, P. 39, 41.

HISTORY

1. Renumbering and amendment of Section 10822 to Section 11102 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11103. Periodic Reports on Special Area Planning.

The Executive Director shall periodically include as part of his or her report a summary of the progress of any special area planning. The summary shall specifically identify any issues of substantial concern, any substantial deviations from the procedures established by the Commission's resolution authorizing the special area planning, and any changes that the Executive Director deems necessary to fulfill the purpose of the special area planning.

(b) The Executive Director shall provide to the Commission a copy of any report, study, or plan published as a result of the special area planning and shall make such materials available to the public.

(c) If the Executive Director determines at any time that the special area planning process is not addressing or resolving the identified issues, or is not providing sufficient opportunity to all interested persons to make their views known, or that changed circumstances exist that make further Commission participation in the special area planning process questionable, he or she shall so advise the Commission and make any appropriate recommendation(s). The Commission shall then determine by a majority vote of those present and voting whether to continue the special area planning without any changes, to continue the special area planning with changes, or to terminate the special area planning.

(d) Whenever the Executive Director or the Commission determines that the special area planning process has reached the point where it is appropriate to commence the process to amend the Bay Plan, the Commission and the staff will thereafter follow the procedures of Chapter 10 for amending the Bay Plan.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: San Francisco Bay Plan, P. 39, 41.

HISTORY

1. Renumbering and amendment of Section 10823 to Section 11103 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

[The next page is 529.]

Chapter 12. Certification and Amendment of Suisun Marsh Local Protection Program

Article 1. Certification of Local Protection Program

§ 11200. Local Agency Requirements for Components of the Local Protection Program.

(a) Each local government and district; required to prepare a component of the Suisun Marsh Local Protection Program and the Solano County Local Agency Formation Commission shall include in their components of the Suisun Marsh Local Protection Program an initial environmental assessment of the component.

(b) The initial environmental assessment shall discuss all substantial adverse environmental impacts associated with the adoption of the component, including the growth–inducing impacts and the cumulative impacts. The analysis shall also discuss feasible alternatives and mitigation measures that the component will require.

(c) Each local government, district, and the Solano County Local Agency Formation Commission shall circulate their approved initial environmental assessments to all interested local governments, responsible agencies, and all interested parties at least thirty (30) days prior to Solano County's consideration of the component.

(d) When a component is presented to the County for endorsement, the component shall list the place, date, mailing list, and notice(s) published for all public hearings that have been held. The component shall also include all written communications received and responses to them.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11200 to Section 11600, and renumbering and amendment of Section 10850 to Section 11200 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 84, No. 28 and 79, No. 29.

§ 11201. County Endorsement of the Local Protection Program.

(a) The County may submit components of a local protection program separately for certification by the Commission.

(b) County endorsement of a local protection program or a component thereof is advisory to the Commission.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10851 to Section 11201 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11202. Commission Distribution of an Endorsed Local Protection Program or Components Thereof.

(a) The County shall furnish to the Commission fifteen (15) copies of an endorsed local protection program or component thereof, and within fifteen (15) days of its receipt by the Commission, the Commission shall distribute a copy of the program or component to the following agencies for comment for a period of not more than sixty (60) days:

(1) California Department of Fish and Game;

(2) California Department of Health Services;

(3) All local governments in the County;

(4) Regional Water Quality Control Board, San Francisco Bay Region;

(5) State Lands Commission;

(6) Attorney General's Office (Deputy Assigned to the Commission);

(7) U.S. Army Corps of Engineers, San Francisco District; and

(8) Any other governmental agencies and interested parties who have requested a copy of the program.

(b) The Commission shall publish once a week for at least two weeks beginning at least thirty (30) days prior to the public hearing notice of the availability of the endorsed local protection program or component for public inspection at the Commission office in a newspaper of general circulation.

(c) With respect to the number of copies that paragraph (a) of this section requires the County to submit, the Executive Director may waive any or all of the requirement if he or she determines that any of the agencies already have a copy of the program or component.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 10852 to Section 11202 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11203. Contents and Distribution of Staff Summary.

(a) The Executive Director shall prepare a brief summary of a proposed local protection program component or proposed amendment to the local protection program or a local protection program component.

(b) The summary shall include staff comments, which shall be clearly distinguished as such, and shall cover the following matters:

(1) whether the proposed component or proposed amendment conforms to the provisions of California Public Resources Code Sections 29000 through 29612, the policies of the Suisun Marsh Protection Plan, and the policies of the San Francisco Bay Plan, and if the proposed component or proposed amendment does not so conform, a specific explanation of how it does not so conform;

(2) a summary of all environmental documentation that the lead agency has prepared;

(3) what action the sponsor of the proposed component or proposed amendment has taken; and

(4) a summary of all comments that the staff has received and a brief response to all comments.

(c) The staff shall mail the staff summary with a copy of the proposed component or amendment and any environmental document at least six (6) days prior to the public hearing to all Commissioners and Alternates, to the sponsor of the proposed component or amendment, to other affected local governments, to all persons who have requested such mailing in writing, and to the agencies listed in Section 11202(a).

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10854 to Section 11203 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11204. Public Hearing(s).

(a) The Commission shall hold a public hearing on the local protection program or component or amendment within ninety (90) days of its receipt from the County.

(b) The Executive Director shall mail notice of the public hearing to all Commissioners and their Alternates, to each of the governmental agencies listed in paragraph (a) of Section 11202, to all interested agencies, organizations, and individuals, and to any other person who requests such notice in writing.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10853 to Section 11204 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11205. Staff Recommendation.

(a) The Executive Director may request the sponsor of the proposed program, component, or amendment to provide any additional information or commitment that he or she deems necessary to prepare the recommendation and shall report any failure to comply with such requests to the Commission.

(b) The Executive Director shall prepare a staff recommendation that shall contain the following:

(1) responses to all comments received either in writing or at the public hearing;

(2) any necessary revisions to the initial environmental assessment;

(3) a recommendation for Commission action on the certification of the local protection program, component, or amendment, which can only be to certify or to refuse to certify, with or without recommendations to the appropriate local agency and county on what the Commission believes would be necessary for it to certify the program, component, or amendment; and

(4) a draft resolution of certification that complies with Section 11206 or a draft resolution of refusal to certify that complies with Section 11207.

(c) The Executive Director shall mail the staff recommendation to all Commissioners and Alternates, to the sponsor of the proposed component or amendment, to other affected local governments, to all persons who have requested such mailing in writing, and to the agencies listed in Section 11202. The mailing shall occur not less than six (6) days prior to the date of the scheduled Commission vote.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10855 to Section 11205 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11206. Contents of Resolution of Certification.

A resolution that certifies the local protection program, a component of the local protection program, or an amendment to the local protection program or component shall include the following:

(a) a statement that the program, component, or amendment conforms to California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, and the policies of the San Francisco Bay Plan;

(b) the text and all necessary diagrams, drawings, exhibits, maps, charts, and supplementary data of the program, component, or amendment; and

(c) specific findings of fact that support the following legal conclusions:

(1) the program, component, or amendment conforms to the relevant provisions of California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, and the San Francisco Bay Plan; and

(2) the program, component, or amendment will either have no significant adverse environmental impacts on matters that the Commission must by law approve or disapprove or has included all feasible alternatives or feasible mitigation measures necessary to offset any significant adverse environmental impacts that the program, component, or amendment will have on matters that the Commission must by law approve or disapprove.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11207. Contents of Resolution of Non–Certification.

A resolution that denies the certification of the local protection program, a component, or an amendment shall include the following:

(a) a statement of all the ways that the proposed program, component, or amendment fails to conform to California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, or the San Francisco Bay Plan, or fails to include all feasible mitigation measures or feasible alternatives necessary to offset any significant adverse environmental impacts that the program, component, or amendment will have on matters that the Commission must by law approve or disapprove;

(b) the text and all necessary drawings, exhibits, etc., of the program, component, or amendment; and

(c) specific findings of fact that support the conclusion that the program, component, or amendment fails to conform to California Public Resources Code Sections 29000 through 29612, the Suisun Marsh Protection Plan, or the San Francisco Bay Plan, or fails to include all feasible mitigation measures or feasible alternatives necessary to offset any significant adverse environmental impacts that the program, component, or amendment will have on matters that the Commission must by law approve or disapprove.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29400–29424, Public Resources Code.

HISTORY

1. New section filed 5–18–7; operative 6–17–87 (Register 87, No. 30).

§ 11208. Notice of Certification of Local Protection Program.

The Executive Director shall make every reasonable effort to assure that all interested persons receive notice of the certified local protection program, component, or amendment. The Executive Director shall also file a notice of the adoption of the local protection program, component, or amendment with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 21080.5(d)(2)(v) and 29400–29424, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10857 to Section 11208 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Article 2. Amendment of the Suisun Marsh Local Protection Program

§ 11210. Amendment Submittal Requirements.

The Commission may file for review a proposed amendment to the certified Suisun Marsh local protection program or a component thereof only if the proposed amendment is submitted pursuant to a resolution of the entity that proposes the amendment adopted after the entity held at least one (1) public hearing. The resolution of the proposed amendment shall contain the following information:

(a) all policies, plans, standards, objectives, diagrams, drawings, maps, charts, and supplementary data related to the proposed amendment in detail sufficient to allow review of the proposed amendment for conformity with the provisions of California Public Resources Code Sections 29000 through 29612, the policies of the Suisun Marsh Protection Plan, and the policies of the San Francisco Bay Plan;

(b) a discussion of the proposed amendment's effect on the component being amended, its relationship to and its effect on the other sections of the local protection program, and its conformity with California Public Resources Code Sections 29000 through 29612 and the policies of the San Francisco Bay Plan and the Suisun Marsh Protection Plan.

(c) any environmental documents required pursuant to California Public Resources Code Section 21000 through 21177 for all or any portion of the proposed amendment;

(d) a summary of the measures taken to provide the public and any affected agency with maximum opportunity to participate in the local protection program or component amendment process, including proof that the entity proposing the amendment gave written notice of its public hearing to all other entities whose components would be affected by the amendment; and

(e) If the proposed amendment would affect any area outside of Suisun Marsh, a statement that the entity proposing the amendment has held a public hearing for which it gave at least thirty (30) days prior notice, and had given the Commission and Solano County at least thirty (30) days prior notice of the nature and text of the proposed amendment.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11211. Submittal of an Amendment.

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 24919, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures

Subchapter 1. General Provisions

§ 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

(1) the violation of a term or condition of a permit,

(2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or

(3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

(1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or

(2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities name as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty–five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross–examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross–examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross–examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross–examination, and the reasons the respondent believes that the information can best be provided by cross–examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross–examination.

(d) If the staff wants to cross–examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross–examine the witness, and the information that the staff hopes to elicit in cross–examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35–day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35–day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35–day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross–examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross–examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross–examine has identified in writing pursuant either to Section 11322(a) or Section 11322(c) the person to be cross–examined, the area or areas of information into which the cross–examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross–examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9–3–92; operative 10–5–92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

(a) all of the matters required by Section 11326; and

(b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10–11–89; operative 11–10–89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10–11–89; operative 11–10–89 (Register 89. No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

(j) all other materials maintained in the Commission's file for the enforcement matter,

(k) such other permit or other Commission files as have explicitly been made a part of the record,

(l) the McAteer–Petris Act,

(m) the San Francisco Bay Plan,

(n) the Suisun Marsh Preservation Act,

(o) the Suisun Marsh Protection Plan,

(p) the Suisun Marsh Local Protection Program, and

(q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639–66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

(1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,

(2) the relative workloads of the Commission and the enforcement committee at the time,

(3) whether the complaint involves any policy issues that should be determined by the Commission initially,

(4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and

(5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

(1) the name(s) of the person(s) required to pay the civil penalty;

(2) the amount of the civil penalty;

(3) the date by which the civil penalty must be paid;

(4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in subsection 11386(e);

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

(1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;

(2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and

(3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty–five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty–five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty–six (36) and sixty–five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS ($1,000.00); or

(B) if the fully executed permit is returned more than sixty–five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00) plus ONE HUNDRED DOLLARS ($100.00) per day from the sixty–fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty–six (36) and sixty–five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS ($1,000.00) per document;

(B) if a required document is submitted between sixty–six (66) and ninety five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00) per document; or

(C) if a required document is submitted more than ninety–five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00) for each document plus ONE HUNDRED DOLLARS ($100.00) per day for each document, from the ninety–sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty–six (36) and sixty–five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS ($1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty–six (66) and ninety–five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety–five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS ($100.00) per day for each violation, from the ninety–sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty–six (36) and sixty–five (65) days and a permit is obtained within one hundred and fifty–five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty–six (36) and sixty–five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS ($2,000.00);

(B) if either a filable application is submitted between sixty–six (66) and ninety–five (95) days and a permit is obtained within one hundred and eighty–five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty–six (66) and ninety–five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS ($5,000.00);

(C) if a filable application is submitted more than ninety–five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS ($5,000.00) plus ONE HUNDRED DOLLARS ($100.00) per day from the ninety–sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty–six (36) and sixty–five (65) days and a permit is obtained within one hundred and fifty–five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty–six (36) and sixty–five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS ($1,000.00);

(B) if either a filable application is submitted between sixty–six (66) and ninety–five (95) days and a permit is obtained within one hundred and eighty–five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty–six (66) and ninety–five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS ($2,000.00);

(C) if a filable application is submitted more than ninety–five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS ($2,000.00) plus ONE HUNDRED DOLLARS ($100.00) per day from the ninety–sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty–six (36) and sixty–five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS ($3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty–six (66) and ninety–five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS ($8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS ($8,000.00) plus ONE HUNDRED DOLLARS ($100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS ($100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good–faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty–five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5, Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2–26–93; operative 3–29–93 (Register 93, No. 9).
2. Amendment filed 6–26–97; operative 7–26–97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12–9–98; operative 1–8–99 (Register 98, No. 50).
4. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

Article 2. Marsh Development Permits Issued by Local Governments

§ 11410. Order of Permits.

If a Suisun Marsh development requires both a marsh development permit from the Commission and a marsh development authorization from a local government because part of the development site is located within either the primary management area of the Suisun Marsh or within tidelands, submerged lands, or other public trust lands within the secondary management area and if another part of the development site is located within the secondary management area of the Suisun Marsh, the person or entity who proposes the development shall first obtain the marsh development authorization from the appropriate local government for that part of the site or development that is within the secondary management area and shall also first obtain a local report that complies with the requirements of Appendix G, No. 29 from the appropriate local government(s) for that portion of the development site that is within the primary management area before requesting a marsh development permit from the Commission for that part of the site or development that is within the primary management area.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29300 and 29502, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11411. Application.

(a) The person or entity applying for a marsh development authorization from local government for a development within the secondary management area shall submit to the local government and the local government shall require the person or entity to provide the following:

(1) an application that provides detailed information about the development and that includes a site plan that shows the property lines of the site and the location and extent of existing and proposed work and uses information that clearly distinguishes existing improvements from proposed improvements, and existing shoreline public access areas from proposed shoreline public access areas, the location of any existing levees and water transporting and water control structures, and information that identifies all building elevations, the approximate distance from the development to the nearest marsh, the location of any managed wetland and any tidal area in the vicinity, and the name and location of the nearest public road;

(2) a statement that describes all environmental impacts that may arise from the proposed development with supporting facts and information;

(3) a statement that the person signing the application is either the applicant or has the authority to bind legally the applicant;

(4) sufficient evidence that shows the applicant either owns the land, has a lease of sufficient duration to allow a reasonable return on any investment, or has an enforceable option on the land on which the development will occur or other similar authority to use the property; and

(5) a statement under penalty of perjury by the person signing the application that all the information submitted is complete and accurate.

(b) The local government may either incorporate the request for this information into its existing applications forms or may request this information separately.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11227 to Section 11411 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11412. Notice to the Commission of Pending Applications.

(a) Within five (5) working days of the filing of an application with the local government for a marsh development authorization, the local government shall provide in writing to the Commission the following information:

(1) the fact of the application;

(2) the nature of the project;

(3) the date the local government filed the application;

(4) the date of any public hearing(s) that will be held; and

(5) an estimated date when the local government will take final action.

(b) The local government shall also promptly notify the Commission within five (5) working days of any changes to the application.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29511, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11413. Local Government Notice to Other Persons of Pending Applications.

(a) The local government shall notify in writing the following entities of a pending application for a marsh development authorization:

(1) the California Department of Fish and Game, Region III;

(2) the State Lands Commission;

(3) the Solano County Mosquito Abatement District;

(4) the Suisun Resource Conservation District;

(5) the San Francisco Bay Regional Water Quality Control Board;

(6) all owners of adjacent property; and

(7) all persons and organizations who have requested such notice in writing.

(b) The local government shall mail such notice at least ten (10) days prior to the date of any public hearing.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29521–29524, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11228 to Section 11413 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11414. Contents of Local Government Notice.

The notice required by Section 11413 shall contain the following:

(a) The name, address, and telephone number of the local government staff person assigned to the project;

(b) sufficient information about the proposed project and the site to allow the recipient to identify the applicable policies of the Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act if the Commission has not certified a local protection program or of the certified local protection program if the Commission has certified one;

(c) a request for comments on the application and the date by which the local government must receive comments;

(d) a statement of when and where any public hearing(s) will be held; and

(e) a brief description of the procedures for appealing a local governmental decision to other local governmental bodies and to the Commission, including the fact that a local government marsh development permit shall become final and unappealable unless either an aggrieved party or two (2) or more Commissioners appeal the issuance of the permit within twenty (20) working days of the receipt of the notice of the final action.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29521–29524, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11228 to Section 11414 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Article 3. Issuance of Local Marsh Development Authorizations

§ 11420. Contents of Local Marsh Development Authorization.

Any marsh development authorization issued by a local government shall be in writing and shall include the following:

(a) a notice to the permittee that the authorization shall not become final until all of the following time periods have passed:

(1) the time period for appealing the action to a higher body within the local government as provided for in the local procedures, and

(2) the twenty (20) working day period after the Commission has received notice of the local government's final action;

(b) a statement that specifically indicates that the local government issued the authorization wholly or partly as a permit required by the Suisun Marsh Preservation Act; and

(c) specific findings that support the issuance of the authorization by relating the facts of the project to the applicable policies of the Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act if the Commission as not yet certified the local protection program or, after the Commission has certified the local protection program, to the policies of the local protection program.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502, 29503, 29521 and 29522, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11235 to Section 11420 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11421. Finality of Local Marsh Development Authorization.

(a) No local marsh development authorization shall become effective until all time periods for appealing the action within the local government and to the Commission have expired without the filing by the Commission of an appeal or until the Commission determines that an appeal raises no substantial issue of compliance with either California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan if no certified Suisun Marsh Local Protection Program exists or with the certified Suisun Marsh Local Protection Program if one does exist.

(b) The twenty (20) working day time period for appealing to the Commission shall not commence until the receipt of the notice of final local action as required by Section 11430.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29522, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11236 to Section 11421 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Article 4. Commission Review of Marsh Development Authorization

§ 11430. Notice of Final Local Action.

The local government shall notify the Commission, Attention: Executive Director, in writing of its final action taken on an application for a marsh development authorization for a development within the secondary management area. The notice shall be dated, shall be delivered by mail or hand delivered, and shall indicate whether the local government issued or denied the authorization, the date on which it acted, and whether its action may be appealed to a higher local body. If the local government granted an authorization, it shall attach a copy of the authorization and all conditions and copy of any local government staff report to the notice.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29521, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11229 to Section 11430 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11431. Filing of Notice.

(a) If the notice of final action complies with the provisions of Section 11430, the Executive Director shall file the notice and date stamp it.

(b) If the Executive Director determines that he or she cannot file the notice because it does not comply with Section 11430, the Executive Director shall return the notice to the local government within five (5) working days of its receipt with a letter that indicates the defects that prevent the notice from being filed.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 2952 and 29521, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11245 to Section 11431 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11432. Notice to Public by Executive Director.

The Executive Director shall notify the Commission and all interested persons who have requested such notification in writing the issuance of local marsh development authorizations in a manner reasonably calculated to allow time for review of the authorization and the filing of an appeal. Commission notification shall ordinarily consist of adding information about the issuance of a local marsh development authorization to the administrative listing prepared pursuant to Section 10620.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29521, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11246 to Section 11432 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Subchapter 2. Appeals to the Commission of Local Marsh Development Authorizations

Article 1. Filing Appeals

§ 11440. Appealing the Issuance of a Local Government Marsh Development Authorization.

(a) The appeal shall be submitted on a form approved by the Commission as Appendix L to these regulations or by letter containing substantially the same information that the form requires.

(b) The Executive Director shall file an appeal only if:

(1) the completed form(s) or letter(s) contain all the information required on the Commission–approved form, and

(2) the Commission has received the letter or form or, in the case of two letters or forms, the last letter or form on or before the twentieth (20th) working day after receipt of the notice of final local action.

(c) "Filing" is complete when the original letter(s) or form(s) are stamped "Filed BCDC" with the date of filing.

(d) If the Executive Director determines that an appeal does not meet the requirements for filing or involves only a non–appealable matter, he or she shall within (30) days of receiving the appeal notify the party or parties who submitted the appeal of the reasons why he or she cannot file the appeal.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502, 29521 and 29522, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11255 to Section 11440 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11441. Effect of Appeal to the Commission.

Upon filing an appeal, the Executive Director shall notify the recipient of the authorization and the affected local government that the appeal has stayed the operation and effect of the marsh development authorization pending final action on the appeal by the Commission.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29522, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11256 to Section 11441 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11442. Duties of Affected Local Government on Appeal.

Within five (5) working days of receipt of a notice of appeal from the Commission, the affected local government shall deliver to the Executive Director all documents and materials relating to the development and the local government action on the authorization application. Such materials shall include, but are not limited to, the application for the authorization, all environmental documents, staff reports, resolutions of approval, conditions attached to the approval, and, if available, the minutes of the meeting(s) at which the matter was considered. The local government may, at its discretion, provide authenticated copies in lieu of the original file materials.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29522, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11256 to Section 11442 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Article 2. Appeal Procedures

§ 11450. Determination to Consider Appeal.

(a) Prior to hearing an appeal, the Commission shall determine whether the appeal does not raise any substantial issue regarding the development's conformity with the provisions of California Public Resources Code Sections 29000 through 29612 and the policies of the Suisun Marsh Protection Plan and the Bay Plan if no certified local protection program exists or, if a certified local protection program exists, with the provisions of the certified local protection program.

(b) The Commission shall determine whether the appeal does not raise any substantial issue only after the staff has presented a recommendation on the substantial issue question. Such recommendation shall ordinarily be made by oral report.

(c) Unless the Commission determines by a majority vote of those present and voting that the appeal does not raise any substantial issue, the Commission shall proceed to hear the appeal. If the Commission determines that the appeal does not raise any substantial issue, it shall dismiss the appeal.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502, 29522 and 29523, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11265 to Section 11450 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11451. Public Hearing Procedures.

The Commission shall determine the appeal by conducting a de novo consideration of the application in accordance with the procedures set forth in Sections 10380 through 10540.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29502 and 29524, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11266 to Section 11451 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11452. Notification of Commission Action to Local Government.

The Commission shall notify the local government, the applicant, and the appealing party(ies) in writing of the action taken by the Commission. The notification should be transmitted within ten (10) working days of the final action.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29524, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11267 to Section 11452 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Chapter 15. Implementation of the California Environmental Quality Act

Subchapter 1. When the Commission Is the Lead Agency

Article 1. Environmental Determinations of Exemption

§ 11500. Statutory Exemptions.

If the Commission is acting as the lead agency:

(a) Prior to filing an application for a Commission permit or to preparing the staff planning report on a planning matter, the Executive Director shall determine if the proposed activity is statutorily exempt under California Public Resources Code Section 21080(b) from the necessity of preparing any environmental documentation.

(b) If the Executive Director determines that the proposed activity is statutorily exempt, he or she shall place a written statement of that determination and the basis for it in the appropriate file and shall include the fact of that determination and the basis for it in the application summary, in the staff planning report, or in the notice of hearing on the planning study if one is scheduled.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 21080(b), 21080.5 and 21166, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11501. Categorical Exemptions.

When the Commission is the lead agency and the Executive Director has determined that the proposed activity is not statutorily exempt under California Public Resources Code Section 21080(b):

(a) Prior to filing an application for a Commission permit or to preparing the staff planning report on a planning matter, the Executive Director shall determine if the proposed activity is categorically exempt under California Public Resources Code Section 21084 and 14 California Code of Regulations Sections 15300 through 15329 from the necessity of preparing any environmental documentation.

(b) Projects for which the Commission issues administrative permits pursuant to Section 10601(a)(1), (3, (4), (5), (6), (7) or (8), or Sections 10601(b), (c), (d)(1), (d)(2) or (f) are usually categorically exempt under subdivision (a) of this section, provided that such projects will not be considered categorically exempt when they either (1) may have an adverse impact on an environmental resource or involve a hazard of critical concern or (2) may have a cumulatively adverse impact when considered with successively similar projects.

(c) If the Executive Director determines that the proposed activity is categorically exempt, he or she shall place a written statement of that determination and the basis for it in the appropriate file and shall include the fact of that determination and the basis for it in the application summary, in the staff planning report on the amendment, or in the notice of hearing for the planning study, if one has been scheduled.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21000, 21080.5, 2084 and 21166, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10910 to Section 11501 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.
2. Amendment of subsections (a) and (b) filed 7–31–96; operative 8–30–96 (Register 96, No. 31).

Article 2. Initial Environmental Information and Determination If Environmental Assessment Required

§ 11510. Executive Director to Prepare Initial Environmental Assessment Information.

(a) When the Commission is the lead agency and the Executive Director determines that proposed activity is neither statutorily exempt nor categorically exempt, the Executive Director shall decide what information will be necessary to evaluate the possible environmental impacts of the proposed activity and to prepare an environmental assessment if necessary, the level of expertise required to prepare the assessment and to what extent the staff may need the assistance of a consultant either to prepare the entire assessment or to provide specific or technical reports to prepare or to help prepare part of the assessment.

(b) The proponent shall provide such information in time to allow the Commission staff to determine if the proposed activity may have a significant adverse environmental impact and, if the staff so decides, to prepare an environmental assessment before the Commission staff files the permit application, publishes the staff planning report for the plan amendment, or publishes a notice for the other planning activity.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10930 to Section 11510 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11511. Determination of Significant Adverse Environmental Impacts and Preparation of an Environmental Assessment.

(a) When the Commission is lead agency and the Executive Director has determined that a proposed activity is not statutorily exempt and is not categorically exempt, he or she shall next determine if the proposed activity may have any individually or cumulatively substantial adverse impact on the physical environment.

(b) If the Commission is the lead agency and the Executive Director determines that a proposed activity is not statutorily exempt, is not categorically exempt, and will not have any significant adverse impact on the physical environment either individually or cumulatively, he or she shall place a written statement of that determination and the basis for it in the appropriate file and shall include the fact of that determination and the basis for it in the application summary, in the staff planning report on the amendment, or in the notice of hearing for the planning study, if one has been scheduled.

(c) If the Commission is the lead agency and the Executive Director determines that the proposed activity is not statutorily exempt, is not categorically exempt, and may have a significant adverse impact on the physical environment either individually or cumulatively, the Commission shall prepare an environmental assessment that complies with Section 11521 and shall include the assessment in the application summary, the staff planning report, or combined staff planning report and recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11512. Notification of Applicant or Proponent.

The Executive Director shall promptly notify the applicant for a Commission permit and the proponent of any planning study or plan amendment if the Executive Director determines that an environmental assessment must be prepared.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Article 3. Preparation of an Environmental Assessment

§ 11520. Use of a Federal Environmental Impact Statement as an Environmental Assessment.

(a) When a federal environmental impact statement or its equivalent has been or will be prepared in time for the Commission to use it as an environmental assessment, the Commission may use it as an environmental assessment if it contains all the information needed in an assessment or if the Commission can supplement it so it will contain all the information needed in an assessment.

(b) If the Commission uses a federal environmental impact statement or its equivalent as its environmental assessment, it should add or supplement a discussion of mitigation, growth–inducing impact, and energy conservation if the environmental impact statement does not include an adequate discussion of these elements.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 21080.5 and 21080.7, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11521. Contents of an Environmental Assessment.

An assessment of the substantial adverse impacts of a proposed activity shall contain a summary of the following:

(a) A brief description of the proposed activity;

(b) all substantial, adverse environmental impacts that the proposed activity may cause;

(c) all irreversible environmental impacts that the proposed activity may cause;

(d) any feasible mitigation measures that would reduce such substantial adverse environmental impacts;

(e) any feasible alternatives, including design alternatives, to the proposed project that would reduce such substantial adverse environmental impacts; and

(f) such other information that the Executive Director believes appropriate.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

Article 4. Use of Consultants

§ 11530. Notification of Applicant.

Whenever the Executive Director determines that a consultant will be needed to prepare an environmental assessment or to provide information to be used in an assessment, the Executive Director shall promptly notify the potential applicant for a permit that a consultant will be needed and that the applicant must bear the cost of the consultant.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 21080.5, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).

§ 11531. Selection of a Consultant.

In order to select a consultant to prepare or to help prepare an environmental assessment, the Executive Director shall:

(a) select three (3) consultants known to have the necessary expertise and obtain from each consultant an estimate of the maximum fees that would be charged for the preparation of the assessment;

(b) after consulting with the applicant, and based on the estimates and previously submitted information about the consultant, choose a consultant who will establish a fixed cost to be incurred in the preparation of the assessment;

(c) notify the applicant of the consultant selected and the amount of the cost;

(d) deposit the environmental assessment fees submitted by the applicant in an account that the Commission maintains for such purposes;

(e) enter into an agreement for the preparation of the assessment or part of the assessment; and

(f) pay the consultant according to a mutually agreed on schedule of payments, usually in installments of twenty–five percent (25%) of the total fee, with twenty–five percent (25%) withheld until the Commission has taken final action on the assessment.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10941 to Section 11531 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11532. Fees in Excess of Estimates.

The Commission will not be responsible under any circumstances for fees that exceed the previously–determined ceiling. The consultant should consider this fact when he or she estimates the fees and costs involved, and every contract for consultant assistance into which the Commission enters shall include a provision to this effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code; and Section 66632(a), Government Code.

HISTORY

1. Renumbering and amendment of Section 10942 to Section 11532 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11533. Relationship of Commission and Consultant.

The Commission through the Executive Director shall have final responsibility for the contents of any environmental assessment that is prepared with the assistance of a consultant. The Executive Director may modify, delete, or change any portion of any material prepared by a consultant, and every contract for consultant assistance into which the Commission enters shall include a provision to this effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10943 to Section 11533 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11534. Use and Ownership of Consultant–Prepared Material.

All studies, data, reports, and other material developed by a consultant shall be made available to the Commission for inspection, review, and copying for any purpose if the Executive Director so requests, and all such studies, data, reports, and other material shall be turned over to the Commission and become the property of the State of California when the consultant fulfills his or her responsibilities and the Commission makes final payment. The Commission shall have the right to publish, use, or change the material. Every contract for consultant assistance into which the Commission enters shall include as provision to this effect.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10950 to Section 11540 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Article 5. Environmental Fees

§ 11540. Basic Fee.

In addition to any other fees, an applicant for a permit shall pay a basic fee of three hundred dollars ($300.00) when the Commission prepares an environmental assessment to cover the costs of analyzing, processing, and mailing the assessment for a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 29520(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10950 to Section 11540 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11541. Preparation Fee.

In addition to any other applicable fees, an applicant for a permit shall pay a fee of five hundred dollars ($500.00) to cover the costs to the Commission of preparing any environmental assessment for which the Commission needs no consultant assistance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 29520(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10951 to Section 11541 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11542. Consultant Fees.

In addition to all other applicable fees, the Commission shall charge to the applicant a fee equal to the ceiling fee for the consultant that the Executive Director determined after consultation with the applicant based on the consultant's estimate provided, however, that the Executive Director shall refund to the applicant after completion of the preparation of the assessment any part of the consultant fee not actually charged by the consultant.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 29520(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10953 to Section 11542 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11543. Exception.

Whenever the Executive Director believes that the basic fee or the preparation fee does not reflect the actual cost to the Commission of analyzing or preparing required environmental documents, the Executive Director may reduce or increase the basic fee or the preparation fee by an amount not exceeding fifty percent (50%) of the normally–required amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 29520(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10954 to Section 11543 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11544. When Environmental Fees Must Be Paid.

All applicable environmental fees must be paid by the applicant prior to the commencement of work on an environmental assessment by the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Section 29520, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10955 to Section 11544 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Article 6. Appeals

§ 11550. Grounds for Appeal.

(a) Any applicant who believes that the Executive Director has improperly determined that an environmental assessment is needed for a project or that the Commission needs the use of a consultant to help prepare an environmental assessment may appeal that determination to the Commission.

(b) Any applicant who believes that the Executive Director has improperly determined the amount of an environmental fee or that the environmental fees are unreasonable may appeal that determination to the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21080.5 and 29510(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10960 to Section 11550 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11551. Time Limits for Appeal and Consultation.

(a) Any applicant who wishes to appeal pursuant to Section 11550 shall inform the Executive Director in writing of that fact and the reasons therefore and provide all supporting documents within five (5) days of receiving written notice of the determination being appealed.

(b) Prior to placing the appeal on the Commission's agenda, the Executive Director, the Chair, and the applicant shall attempt to resolve the disagreement.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21080.5 and 29510(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10961 to Section 11551 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11552. Hearing an Appeal.

The Executive Director shall schedule an appeal under Section 11550 that the Chair, Executive Director, and applicant cannot resolve at the soonest regularly–scheduled Commission meeting after the Chair, the Executive Director, and the applicant fail to resolve the dispute.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21080.5 and 29510(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10963 to Section 11552 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11553. Commission Determination.

If the Commission finds that the Executive Director acted improperly or unreasonably in making the determination being appealed, it shall order the Executive Director to do what it believes is proper or reasonable.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(a), Government Code; and Sections 21080.5 and 29510(b), Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10964 to Section 11553 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Subchapter 2. When the Commission Is a Responsible Agency

§ 11560. Review and Comment on Environmental Documents.

(a) When the Commission is not the lead agency on any activity, the Executive Director shall:

(1) review any environmental working papers or IES, environmental impact report, or environmental impact statement sent to him for consultation from the lead agency or the State Clearinghouse, determine what comments should be made on behalf of the Commission, and forward such comments to the lead agency and to the appropriate state agency for coordinating state comments;

(2) require an applicant to file prior to filing the BCDC application a single–spaced, typewritten summary of any environmental documentation already prepared by the lead agency on paper 8 1/2 x 11 inches pages in size. The summary shall indicate significant environmental issues raised during the review period or at the public hearing and the disposition of such issues, including any revision to the proposed project to mitigate its impacts or any objections, and a detailed explanation of why the applicant believes the Commission should approve the project when any objection remains unresolved or any recommendation has not been adopted. The summary shall also include the name, address, and telephone number of the governmental agency preparing or certifying the document, the date of certification, and the name, address, and telephone number of all persons who reviewed the document, and any criticism and any recommended changes they made; and

(3) include any certified environmental impact report, environmental impact statement, or certified negative declaration that is less than ten (10) pages in length, or summary thereof if the EIR, EIS, or negative declaration is longer than ten (10) pages in length, with the staff summary of the permit application.

(b) The Commission may in its discretion hold a public hearing on any environmental document submitted to it and may direct the staff to make whatever comments or to obtain whatever additional information the Commission deems appropriate.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10970 to Section 11560 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

§ 11561. Effect of Comments.

Comments by or on behalf of the Commission concerning environmental documents are intended to help the lead agency prepare adequate environmental documents. They do not indicate what action the Commission may take when the project comes before the Commission for a permit, nor do they preclude the Commission from requiring additional environmental information regarding environmental impacts of those activities that the Commission is required by law to review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 10972 to Section 11561 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 79, No. 29.

Chapter 16. San Francisco Bay Conservation and Development Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 VAN NESS AVENUE, ROOM 2011
SAN FRANCISCO, CALIFORNIA 94102

FAIR POLITICAL PRACTICES COMMISSION
1100 "K" STREET
SACRAMENTO, CALIFORNIA 95814

ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 16, Division 5 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 16. San Francisco Bay Conservation and Development Commission—Conflict of Interest Code

Section
11600. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300 et seq., Government Code.

HISTORY

1. Renumbering of section 11200 to section 11600 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 84, No. 28.
2. Amendment filed 8–23–93; operative 9–22–93. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7–7–93 (Register 93, No. 35).
3. Amendment of Appendix filed 11–6–98; operative 12–6–98. Approved by Fair Political Practices Commission 8–31–98 (Register 98, No. 45).

Chapter 17. Regionwide Permits

Article 1. Issuance of Regionwide Permits and Abbreviated Regionwide Permits

§ 11700. Regionwide Permit.

The San Francisco Bay Conservation and Development Commission may issue, by resolution, one or more regionwide permits and abbreviated regionwide permits to authorize throughout its McAteer–Petris Act jurisdiction a specific category or categories of activities hat the Commission determines will have no substantial impact on areas within the Commission's McAteer–Petris Act jurisdiction, including but not limited to routine repair and maintenance of existing structures located within San Francisco Bay, a managed wetland, or a certain waterway and routine repair, maintenance, and improvements to structures located within the shoreline band. Regionwide permits and abbreviated regionwide permits have the same force and effect as other permits that the Commission issues, and the Commission may enforce the terms and conditions of regionwide and abbreviated regionwide permit in the same manner as the Commission enforces the terms and conditions of other Commission permits.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering of Section 11300 to Section 11700 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.
2. Amendment of Article 1 heading and section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

§ 11700.1. Abbreviations.

When used in this Chapter, "Notice of Intent to Proceed" may be abbreviated as "NOI."

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

Article 2. Notice of Intent to Proceed Under Regionwide Permits

§ 11710. Need to File Notice of Intent to Proceed.

Prior to commencing any project for which a Commission permit is required and which the project sponsor believes is authorized by a Commission regionwide permit, the project sponsor shall submit to the Executive Director a written notice of intent to proceed that complies with Section 11711, shall receive approval of the notice of intent to proceed pursuant to Section 11713, and shall acknowledge the terms and conditions of the regionwide permit pursuant to Section 11715.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of Section 11310 to Section 11710 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.
2. Amendment of Article 2 heading filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

§ 11711. Contents of Notice of Intent to Proceed.

The written notice of intent to proceed that Section 11710 requires shall contain the following:

(a) a detailed description of the proposed project, which may consist of either;

(1) a fully completed application form, Part I only, as set out in Appendix D to these regulations, or

(2) a letter that provides the same information as a fully completed form;

(b) proof of legal interest, and one copy each of a large scale site plan, an 8 1/2" x 11" copy of the site plan, and vicinity map, all as described in Appendix F;

(c) a check or money order in the amount specified in Appendix M to these regulations; and

(d) an executed Certificate of Posting of "Notice of Pending BCDC Application," as specified in Appendix E.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of section 11311 to section 11711 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.
2. Amendment of subsections (a) and (c) filed 10–12–89; operative 10–12–89 (Register 89, No. 43).
3. Amendment of subsection (a), new subsection (b), renumbering and amendment of subsections (b) and (c) to subsections (c) and (d) filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
4. Amendment of subsection (c) filed 11–20–91; operative 12–20–91 (Register 92, No. 8).

§ 11712. Executive Director's Determination Whether a Notice of Intent to Proceed Is Complete.

(a) The Executive Director shall determine within 30 days of receipt of a Notice of Intent to Proceed whether the notice complies fully with Section 11711.

(b) If the Executive Director determines that a Notice of Intent to Proceed complies fully with Section 11711, the Executive Director shall proceed according to Sections 11713 and 11714 to determine whether the activity is authorized by the regionwide permit.

(c) If the Executive Director determines that a Notice of Intent to Proceed does not fully comply with Section 11711, the Executive Director shall within 30 days of receipt of the notice notify the project sponsor in writing of his or her determination, the reasons for the determination, and what further information is needed to complete the Notice of Intent to Proceed.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of Section 11312 to Section 11712 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11713. Approval of a Notice of Intent to Proceed.

(a) If the Executive Director has determined that a Notice of Intent to Proceed complies fully with Section 11711, he or she shall approve or disapprove the notice within 14 days of the determination of completeness.

(b) The Executive Director shall base his or her determination on whether to approve or disapprove the Notice of Intent to Proceed only on the proposed project's consistency with any one or more Commission regionwide permit.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of Section 11313 to Section 11713 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11714. Notification of Executive Director's Decision.

(a) If the Executive Director approves a Notice of Intent to Proceed, he or she shall notify the project sponsor in writing of the approval and shall include a copy of the applicable regionwide permit with the written approval.

(b) If the Executive Director disapproves a Notice of Intent to Proceed, he or she shall notify the project sponsor in writing of the disapproval and the reasons for the disapproval.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of Section 11314 to Section 11714 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11715. Project Sponsor Acknowledgment and Execution of Regionwide Permit.

The project sponsor shall acknowledge receipt and acceptance of the terms and conditions of the regionwide permit by signing and dating a copy of the regionwide permit and returning the executed copy of the regionwide permit to the Executive Director within 14 days of receipt of the written approval of the notice and of the copy of the applicable regionwide permit.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering and amendment of Section 11315 to Section 11715 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

§ 11716. Application After Executive Director's Determination That a Notice of Intent to Proceed Is Not Complete or from Executive Director's Disapproval of a Notice of Intent to Proceed.

If a project sponsor believes that the Executive Director has either improperly determined that a Notice of Intent to Proceed is not complete or improperly disapproved a Notice of Intent to Proceed, the project sponsor may apply for a Commission permit without waiting 90 days.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. Renumbering of Section 11316 to Section 11716 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

Article 3. Notice of Intent to Proceed Under Abbreviated Regionwide Permits

§ 11717. Need to File Notice of Intent to Proceed.

Prior to commencing any project for which a Commission permit is required and which the project sponsor believes is authorized by a Commission abbreviated regionwide permit, the project sponsor shall complete, sign and submit to the Executive Director a Notice of Intent to Proceed under an Abbreviated Regionwide Permit (which these regulations contain as Appendix N); shall receive approval of the NOI pursuant to Section 11719; and shall acknowledge the terms and conditions of the abbreviated regionwide permit pursuant to Section 11720.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32). For prior history, see Register 89, No. 43.

§ 11718. Executive Director's Determination Whether a Notice of Intent to Proceed Under an Abbreviated Permit is Complete.

(a) The Executive Director shall determine within thirty (30) days of receipt of a completed NOI for an Abbreviated Regionwide Permit whether the information provided in the notice is complete.

(b) If the Executive Director determines that an NOI for an Abbreviated Regionwide Permit is complete, the Executive Director shall proceed according to Section 11720 to determine whether the activity is authorized by the abbreviated regionwide permit.

(c) If the Executive Director determines that an NOI for an Abbreviated Regionwide Permit is incomplete, the Executive Director shall within thirty (30) days of receipt of the notice notify the project sponsor in writing of his or her determination, the reasons for the determination, and what further information is needed to complete the NOI.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32). For prior history, see Register 89, No. 43.

§ 11719. Approval or Disapproval of a Notice of Intent to Proceed Under an Abbreviated Regionwide Permit; Notification of Determination.

(a) If the Executive Director has found that an NOI for an Abbreviated Regionwide Permit is complete, he or she shall determine whether the NOI is approved or disapproved and, within seven (7) working days of the determination of completeness, notify the project sponsor in writing of the determination of approval or disapproval, as follows:

(1) If the NOI is approved, the Executive Director shall enclose a copy of the applicable abbreviated regionwide permit with the written approval; or

(2) If the NOI is disapproved, the Executive Director shall notify the project sponsor of the reasons for the disapproval.

(b) The Executive Director shall base a determination on whether to approve or disapprove the NOI only on the proposed project's consistency with any one or more Commission abbreviated regionwide permits.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

§ 11720. Project Sponsor Acknowledgement and Execution of Abbreviated Regionwide Permit.

The project sponsor shall acknowledge receipt and acceptance of the terms and conditions of the abbreviated regionwide permit as follows:

(a) the project sponsor shall sign and date a copy of the abbreviated regionwide permit;

(b) the project sponsor shall return the executed copy to the Executive Director within fourteen (14) days of receipt of the written approval of the NOI and of a copy of the abbreviated regionwide permit.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

§ 11721. Application After Executive Director's Determination That a Notice of Intent to Proceed Is Not Complete or from Executive Director's Disapproval of a Notice of Intent to Proceed Under an Abbreviated Regionwide Permit.

If a project sponsor believes that the Executive Director has either improperly determined that a Notice of Intent to Proceed is not complete or improperly disapproved a Notice of Intent to Proceed, the project sponsor may apply for a Commission permit without waiting ninety (90) days.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66604 and 66632, Government Code.

HISTORY

1. New section filed 8–6–96; operative 9–5–96 (Register 96, No. 32).

Appendix A

Declaration to be filed and recorded as Notice and in Marin County Clerk's file:

NOTICE OF NON–JURISDICTION OF THE BCDC—
LARKSPUR BOARDWALK

WHEREAS, Government Code Section 66610 has been amended to state that "The jurisdiction of the Commission under this section shall not extend to the areas commonly known as the Larkspur Boardwalk in the County of Marin, such areas to be defined by Commission Regulation," the following described areas shall be excluded from the jurisdiction of the Bay Conservation and Development Commission.

AREA OF LARKSPUR BOARDWALK NO. 1 TO BE EXCLUDED FROM BCDC JURISDICTION

PORTIONS OF REAL PROPERTY situated in the City of Larkspur, County of Marin, State of California, known as "Larkspur Boardwalk No. 1," consisting of 38 parcels of land accessible from Corte Madera Creek and/or its tributaries are to be excluded from Bay Conservation and Development Commission jurisdiction in the manner and in the following described proportions; the following described parcel and excepted areas from exclusion have been superimposed upon an enlarged aerial photograph which shall be on file in the Office of the Marin County Surveyor in County Surveyor's file; said parcel to be excluded and exceptions thereto being described as follows:

REAL PROPERTY in the City of Larkspur, County of Marin, State of California, described as follows:

BEGINNING at a point on the Westerly boundary line of Rancho Corte Madera Del Presidio described in the deed recorded in Volume 66 of Deeds, at page 13, Marin County Records, distant thereon North 19° 45′ West 210.45 feet from a concrete monument situated on said Westerly line designated "PQ 96," said point of beginning being also the Southwestern corner of Parcel 1 as said parcel of land is described in the deed to Richard W. Roth dated and recorded September 7, 1967, in Book 2156 of Official Records of Marin County, at page 10; running thence along the Southeastern line of said Richard W. Roth parcel North 46° 36′ 30″ East 159.69 feet to Southeastern corner of the last said parcel; thence along the Northeastern line of the last said parcel and along the center line of that certain utility easement 20.00 feet wide, measured at right angles, described in the deed to Robert Evers, et ux., recorded July 26, 1950, in Book 658 of Official Records of Marin County, at page 88, the following six courses:

North 20° 07′ 30″ West 416.04 feet;
North 2° 58′ 30″ East 260.44 feet;
North 47° 13′ 00″ East 243.10 feet;
North 56° 46′ 30″ East 619.40 feet;
North 40° 00′ 30″ East 642.00 feet; and
North 55° 45′ 00″ East 20.14 feet; to

the Northern line of that parcel of land described in the deed to John B. De Maria, et ux., recorded September 10, 1969, in book 2325 of Official Records of Marin County, at page 469; thence along the last named line South 85° 24′ 42″ West 107.48 feet; thence Southwesterly along the arc of a tangent curve to the left with a radius of 269.47 feet, through an angle of 38° 45′ 50″, for a distance of 182.31 feet; thence North 51° 35′ 30″ West 11.41 feet;

thence South 40° 00′ 30″ West 60.02 feet;
thence South 51° 35′ 30″ East 5.58 feet;
thence South 47° 01′ 34″ West 31.69 feet;
thence South 37° 15′ 00″ West 68.89 feet;
thence South 44° 05′ 00″ West 119.69 feet;
thence South 46° 23′ 00″ West 78.99 feet;
thence South 46° 01′ 00″ West 15.69 feet;
thence South 51° 51′ 30″ West 196.32 feet;
thence South 56° 46′ 30″ West 60.02 feet;
thence South 73° 43′ 00″ West 58.52 feet;
thence South 56° 46′ 30″ West 37.00 feet;
thence South 51° 53′ 30″ West 28.00 feet;
thence South 62° 19′ 00″ West 54.55 feet;
thence South 75° 45′ 00″ West 45.54 feet;
thence South 77° 09′ 00″ West 42.00 feet;
thence South 01° 14′ 00″ West 15.55 feet;
thence North 82° 26′ 00″ West 41.58 feet;
thence South 76° 22′ 30″ West 14.46 feet;
thence South 34° 19′ 50″ West 119.04 feet;
thence South 22° 14′ 00″ West 38.75 feet;
thence South 47° 36′ 30″ West 97.61 feet;
thence South 37° 58′ 00″ West 62.50 feet;
thence North 52° 02′ 00″ West 20.00 feet;

thence South 21° 47′ 10″ West 87.50 feet;
thence South 06° 05′ 50″ East 202.73 feet;
thence South 88° 31′ 30″ East 20.00 feet;
thence South 02° 58′ 30″ West 50.00 feet;
thence North 88° 31′ 30″ West 85.15 feet; to said

Westerly boundary line of said Rancho Corte Madera Del Presidio, thence along the last named line South 19° 45′ 00″ East 616.41 feet to the point of beginning;

EXCEPTING therefrom that parcel of land hereinabove described, the following seven parcel of land which are to remain within the jurisdiction of Bay Conservation and Development Commission jurisdiction, described as follows:

Parcel 1: BEGINNING at a point on that course hereinabove described as "North 20° 07′ 30″ West 416.04 feet" distant thereon South 20°07′ 20″ East 91.47 feet from the most Northwesterly terminus thereof; running

thence South 69° 52′ 30″ West 39.54 feet;
thence North 68° 45′ 00″ West 53.53 feet;
thence South 54° 15′ 00″ West 20.00 feet;
thence South 19° 45′ 00″ East 80.00 feet;
thence South 09° 22′ 26″ East 61.07 feet;
thence North 69° 52′ 30″ East 12.00 feet;
thence South 19° 45′ 00″ East 257.82 feet;
thence South 46° 36′ 30″ West 50.21 feet;
thence North 19° 45′ 00″ West 616.41 feet;
thence South 88° 31′ 30″ East 75.00 feet;
thence South 00° 04′ 01″ East 65.39 feet;
thence South 06° 20′ 00″ East 60.91 feet;
thence South 50° 00′ 00″ East 32.53 feet;
thence North 54° 15′ 00″ East 20.00 feet;

thence South 68° 45′ 00″ East 24.00 feet;
thence South 42° 30′ 00″ East 20.00 feet;
thence North 87° 00′ 00″ East 51.06 feet; to said

course designated "North 20° 07′ 30″ West 416.04 feet"; thence along the last said designated course South 20° 07′ 30″ East 8.34 feet to the point of beginning;

Parcel 2: COMMENCING at a point on that course hereinabove described as "North 2° 58′ 30″ East 260.44 feet," distant thereon North 20o58'30" East 125.14 feet from the most Southwesterly terminus thereof; thence North 88° 31′ 30″ West 100.00 feet to the ACTUAL POINT OF BEGINNING: running thence North 88° 31′ 30″ West 20.00 feet;
thence North 06° 05′ 50″ West 202.73 feet;
thence North 21° 47′ 10″ East 87.50 feet;
thence South 52° 02′ 00″ East 20.00 feet;
thence North 37° 58′ 00″ East 62.50 feet;
thence North 47° 36′ 30″ East 97.61 feet;
thence South 40° 33′ 14″ West 96.33 feet;
thence South 37° 58′ 00″ West 93.11 feet;
thence South 07° 15′ 00″ West 69.56 feet;
thence South 10° 10′ 00″ East 129.00 feet; to a line
drawn North 14° 35′ 00″ East from the actual point of beginning;
thence South 14° 35′ 00″ West 45.00 feet; to the actual point of beginning;

Parcel 3: COMMENCING at a point on that course hereinabove described as "North 47° 13′ East 243.10 feet" distant thereon North 47° 13′ East 229.22 feet from the most Southwesterly terminus thereof; thence North 19° 40′ 30″ West 8.65 feet;
thence South 34° 19′ 50″ West 111.04 feet;
thence South 59° 47′ 00″ East 7.02 feet; to a line
drawn South 34° 19′ 50″ West from the actual point of beginning;
thence North 34° 19′ 50″ East 105.45 feet; to the actual point of beginning;

Parcel 4: COMMENCING at a point on that course hereinabove described as "North 56° 46′ 30″ East 619.40 feet" distant thereon South 56° 46′ 30″ West 159.77 feet from the most Northeasterly terminus thereof; thence North 34° 03′ 30″ West 149.98 feet to the ACTUAL POINT OF BEGINNING: running thence North 34° 03′ 30″ West 19.05 feet;
thence South 51° 51′ 30″ West 35.94 feet;
thence South 31° 33′ 30″ East 19.13 feet; to a line
drawn South 51° 51′ 30″ West from the actual point of beginning;
thence North 51° 51′ 30″ East 36.78 feet; to the actual point of beginning;

Parcel 5: COMMENCING at a point on that course hereinabove designated as "North 56° 46′ 30″ East 619.40 feet" distant thereon South 56° 46′ 30″ West 128.74 feet from the most Northeasterly terminus thereof; thence North 34° 03′ 30″ West 161.67 feet to the ACTUAL POINT OF BEGINNING:
thence North 34° 03′ 30″ West 9.02 feet;
thence North 51° 51′ 30″ East 129.28 feet;
thence North 46° 01′ 00″ East 15.69 feet;
thence North 46° 18′ 17″ East 78.99 feet;
thence South 35° 16′ 30″ East 9.10 feet;
thence South 46° 18′ 17″ West94.59 feet; to a line
drawn North 51° 51′ 30″ East from the actual point of beginning;
thence South 51° 51′ 30″ West 129.54 feet; to the actual point of beginning;

Parcel 6: COMMENCING at a point on that course hereinabove described as "north 40° 00′ 30″ East 642.00 feet" distant thereon North 40° 00′ 30″ East 238.05 feet from the most Southwesterly terminus thereof; thence North 40° 41′ 00″ West 155.00 feet to the ACTUAL POINT OF BEGINNING:
thence North 40° 41′ 00″ West 3.00 feet;
thence North 37° 15′ 00″ East 68.89 feet;
thence North 47° 01′ 34″ East 31.69 feet;
thence South 51° 35′ 30″ East 12.42 feet;
thence South 38° 24′ 30″ West 34.19 feet; to a line
drawn North 49° 19′ 00″ East from the actual point of beginning;
thence South 49° 19′ 00″ West 67.82 feet; to the actual point of beginning.

Parcel 7: BEGINNING at the most Northeasterly terminus of that course hereinabove described as "North 56° 46′ 30″ East 619.40 feet"; running thence along the last said line South 56° 46′ 30″ West 30.00 feet;
thence North 33° 13′ 30″ West 12.00 feet;
thence South 56° 46′ 30″ West 568.56 feet;
thence South 26° 46′ 30″ West 24.00 feet;
thence South f47° 13′ 00″ West194.97 feet;
thence North 52° 02′ 00″ West 70.92 feet;
thence North 47° 13′ 00″ East 132.34 feet;
thence North 55° 24′ 51″ East 137.43 feet;
thence North 56° 46′ 30″ East 539.26 feet;
thence North 40° 00′ 30″ East 599.29 feet; to said
Northwestern line of said John B DeMaria parcel of land (2325 O.R. 469) mentioned hereinabove; thence along the last named line North 85° 24′ 42″ East 67.87 feet;
thence South 40° 00′ 30″ West 621.10 feet; to a line
drawn North 4° 59′ 30″ West from the point of beginning;
thence South 04° 59′ 30″ East 24.04 feet;to the actual point of beginning.

Appendix B

Declaration to be filed and recorded as Notice and Marin County Clerk's file:

NOTICE OF NON–JURISDICTION OF THE BCDC—
GREENBRAE BOARDWALK

WHEREAS, Government Code Section 66610 has been amended to state that "The jurisdiction of the Commission under this section shall not extend to the areas commonly known as the Greenbrae Boardwalk in the County of Marin, such areas to be defined by Commission Regulation," the following described areas shall be excluded from the jurisdiction of the Bay Conservation and Development Commission.

AREA OF GREENBRAE BOARDWALK TO BE EXCLUDED
FROM BCDC JURISDICTION

All that REAL PROPERTY situated in the unincorporated territory of the County of Marin, known as "Greenbrae Boardwalk," shown delineated on that certain map entitled "Licensed Survey Map of Subdivision of Portion of Hugh Porter Prop., Greenbrae–Marin Co.–Cal.," etc., filed August 9, 1939, in Volume 2 of Licensed Surveys, at page 93, Marin County Records to be excluded from BCDC jurisdiction are designated by assessor's parcel numbers, shown on the 1974–1975 Marin County Equalized Tax–Assessment Rolls, on file in the Office of the Marin County Surveyor in County Surveyor's file; said real property being also situated within the bounds of the following described parcel of land:

REAL PROPERTY partly in the City of Corte Madera, County of Marin, State of California, described as follows:

BEGINNING at the Northwestern corner of Lot 45 as said lot is shown on the map entitled "Subdivision of Portion of Hugh Porter Prop., Greenbrae–Marin Co.–Cal.," etc., filed August 9, 1939, in Volume 2 of Licensed Surveys, at page 93, Marin County Records; running thence along the Western line of said Lot 45 along the exterior boundary line of said subdivision the following three courses: South 6° 58′ 00″ East, 203.39 feet, South 70° 11′ 00″ East, 227.00 feet and South 2° 41′ 40″ West, 102.00 feet; thence South 2° 41′ 40″ West, 30.07 feet;
thence North 89° 10′ 00″ East 28.94 feet;
thence South 77° 45′ 00″ East 47.83 feet;
thence South 61° 18′ 00″ East 55.34 feet;
thence South 74° 38′ 00″ East 81.22 feet;
thence South 62° 37′ 00″ East 23.33 feet;
thence South 27° 00′ 00″ East 7.69 feet;
thence South 12° 57′ 58″ West 52.38 feet;

thence along the arc of a tangent curve to the left with a radius of 80.00 feet, through an angle of 187° 08′ 58″, for a distance of 261.31 feet to the direct extension produced Southwesterly of the Western line of Lot 83 as said lot is shown on said map; thence along said extension of the last said Western line North 49° 00′ 00″ East 73.39 feet to the Southwestern corner of said Lot 83; thence along the exterior boundary of said lot and subdivision the following eleven (11) courses to the point of beginning:

South 74° 46′ 00″ East 86.53 feet;
North 04° 25′ 00″ West 119.64 feet;
South 85° 35′ 00″ West 397.92 feet;
South 85° 45′ 00″ West 499.76 feet;
South 80° 48′ 30″ East 146.94 feet;
North 05° 13′ 00″ West 176.16 feet;
South 85° 45′ 00″ West 639.91 feet;
South 85° 35′ 00″ West 259.12 feet;
North 71° 00′ 00″ West 357.00 feet;
North 56° 12′ 00″ West 301.01 feet;
North 51° 01′ 20″ West 303.05 feet; and
South 06° 58′ 00″ West 234.00 feet; to the

point of beginning; EXCEPTING THEREFROM the following described parcel of land:

BEGINNING at the Southwestern corner of Lot 83 as said lot is shown on said map referred to hereinabove; running thence along the Western line of said lot, North 5° 49′ 00″ East; thence North 30° 54′ 00″ East 222.69 feet to the Northern boundary line of said subdivision referred to hereinabove; thence along the last named line North 71° 00′ 00″ West 32.70 feet; thence South 30° 54′ 00″ West 223.07 feet to an angle point in the Eastern line of Lot 57 as said lot is shown on said map referred to hereinabove; thence along the last named line and along the general Southern boundary line of said subdivision the following ten (10) courses:

South 05° 49′ 00″ West 72.94 feet;
South 12° 30′ 00″ West 90.00 feet; along the

arc of a tangent curve to the right with a radius of 38.00 feet, through an angle of 169° 11′ 30″, for a distance of 112.21 feet;

North 01° 41′ 30″ East 74.67 feet;
North 27° 00′ 00″ West 25.00 feet;
North 62° 37′ 00″ West 36.12 feet;
North 74° 38′ 00″ West 81.14 feet;
North 62° 18′ 00″ West 56.17 feet;
South 89° 10′ 00″ West 30.53 feet; to the

Southwestern corner of Lot 49 as said lot is shown on said map referred to hereinabove;

thence South 02° 41′ 40″ West 30.06 feet;
thence North 89° 10′ 00″ East 28.94 feet;
thence South 77° 45′ 00″ East 47.83 feet;
thence South 62° 18′ 00″ East 55.34 feet;
thence South 74° 38′ 00″ East 81.22 feet;
thence South 62° 37′ 00″ East 23.33 feet;
thence South 27° 00′ 00″ East 7.69 feet;
thence South 12° 57′ 58″ West 52.38 feet;

thence along the arc of a tangent curve to the left with a radius of 80.00 feet, through an angle of 187° 08′ 58″, for a distance of 261.31 feet to a line drawn South 5° 49′ 00″ West from the point of beginning; thence North 5° 49′ 00″ East 73.39 feet to the point of beginning.

Appendix C

Notice of Exemption from Marsh Development Permit Requirement

Pursuant to California Public Resources Code Section 29508(d), the following described property is exempt from the necessity of obtaining a marsh development permit for any marsh developments completely located within the following property:

1. Parcel K as shown on the Record of Survey entitled "Survey of the Lentz–Sweet–Hill–Anderson–Waldlow Properties," filed on October 11, 1967 in the Office of the Recorder of Solano County, California, in Book 10 of Surveys at page 57.

NOTE: Authority cited: Sections 29201(e) and 29508(d), Public Resources Code. Reference: Section 29508(d), Public Resources Code.

HISTORY

1. New Appendix C filed 12–7–83; effective thirtieth day thereafter (Register 83, No. 50).

Appendix D
BCDC Application Form
March 16, 2000

Box 1 Applicant Information

a. PROPERTY OWNER:
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____

b. OWNER'S REPRESENTATIVE: ❑ None
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____
Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Owner Date

c. APPLICANT:
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____

d. APPLICANT'S REPRESENTATIVE: ❑ None
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____
Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Applicant Date

e. CO-APPLICANT: ❑ None
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____

f. CO-APPLICANT'S REPRESENTATIVE: ❑ None
Name: _____
Address: _____
City, State, Zip: _____
Telephone: ___/_____ Fax: ___/_____
Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Co-Applicant Date

Box 2 Certification of Accuracy of Information

I hereby certify under penalty of perjury that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

■ _____ _____
Signature of Owner or Owner's Representative Date

■ _____ _____
Signature of Applicant or Applicant's Representative Date

■ _____ _____
Signature of Co-applicant or Co-applicant's Representative Date

Box 3 Project Information

a. Project Name: _____

b. Project Description: _____

_____

c. Date work is expected to begin: _____ Date Work is expected to be completed: _____

d. Does the project involve development within the primary management area of the Suisun Marsh ?

❑ Yes ❑ No

If "Yes," provide any relevant duck club number(s): _____

e. Does the project involve the placement of fill of any type in San Francisco Bay or within the primary management area of the Suisun Marsh , a salt pond, a managed wetland, or a certain waterway ?

❑ Yes ❑ No

If "Yes," complete Box 5.

f. Does the project involve development within the 100-foot shoreline band around San Francisco Bay ?

❑ Yes ❑ No

If "Yes," complete Box 6.

g. Does the project involve dredging or the disposal of dredged material in San Francisco Bay, in the primary management area of the Suisun Marsh, in a salt pond, wetland or certain waterway ?

❑ Yes ❑ No

If "Yes," complete Box 8.

h. Total Project Cost: $_____

i. Processing Fee: $_____

BCDC Application Form 2

Box 4 Total Project and Site Information

a. Project Street Address: _____

b. City, County, State, Zip: _____

c. Assessor's Parcel Numbers): _____ _____

d. ID number(s) of previous BCDC permit(s) issued for work on this site: _____ _____

e. Length of shoreline on the project site: _____ feet

f. Length of shoreline of any adjacent property owned by the owner of the project site: _____ feet

g. Approximate total size of project site (including areas outside BCDC's jurisdiction): _____ square feet

h. Area reserved for non-public access uses: _____ square feet

i. Area reserved for public access: _____ square feet

j. Total size of underwater and tidal areas of the project site: _____ square feet

k. **INFORMATION ABOUT THE TOTAL PROJECT AND SITE TO BE PROVIDED IN AN ATTACHMENT:**

1. Please describe the existing condition of the site, including the present elevations, current vegetation, existing structures and use of the site.
2. Please describe the area, in square feet, within the total project site that will be used each for: (1) structures, roads, and parking; (2) landscaping; and (3) left undeveloped.
3. Please indicate whether the project will involve the release of pollutants or have the potential for accidental pollutant discharge into the Bay.
4. Please identify any suspected or known sites of toxic contamination on or in proximity to the project site, and provide the following information: (a) identify the types of pollutants present; (b) show the location of the pollutants on the site plan; (c) describe the extent to which the pollutants are accessible to humans, fish, wildlife or vegetation, or are moving offsite; and (d) steps being taken (including government actions) to control or clean up the pollutants.

Box 5

Bay Fill Information

("Fill" means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks.)

a.	Total volume of solid fill to be placed in water or marsh areas:	_____	cubic yards
b.	Area to be covered with solid fill:	_____	square feet
c.	Area to be covered with floating fill:	_____	square feet
d.	Area to be covered with pile-supported fill:	_____	square feet
e.	Area to be covered with cantilevered fill:	_____	square feet
f.	Total area to be filled:	[ ]	square feet
g.	Of the total area specified in "g", *open water area to be filled:*	_____	square feet
h.	Tidal marsh or wetland area to be filled:	_____	square feet
i.	Salt pond area to be filled:	_____	square feet
j.	Managed wetland area in the primary management area of the Suisun Marsh to be filled:	_____	square feet
k.	Other managed wetland area to be filled:	_____	square feet
l.	Area on new fill to be reserved for private, commercial, or other uses:	_____	square feet

m. Area on new fill to be reserved for public access: ____ square feet

n. What is the basic purpose of the new fill in the Bay, salt pond, managed wetland, or certain waterway?

_____

_____

o. **INFORMATION REGARDING FILL TO BE PROVIDED IN AN ATTACHMENT:**

1. Please specify the area of fill, in square feet, proposed to be covered by structures; used for roads; used for parking; used for pathways and sidewalks; covered with landscaping; used for piers, docks, and other maritime- related purposes; placed for shoreline protection; and used for other purposes (specify uses).
2. Please provide dimensions of portions of all structures to be built on new fill, including length, width, area, height and number of stories.
3. Please provide one or more photographs of existing shoreline conditions.

(Continued on Page 5)

(Box 5, Bay Fill Information, continued)

p. PROVIDE THE FOLLOWING INFORMATION TO JUSTIFY THE PROPOSED FILL:

1. The Commission can approve new fill for only five purposes: (1) accommodating a water–oriented use; (2) improving shoreline appearance; (3) providing new public access to the Bay; (4) accommodating a project that is necessary to the health, safety, or welfare of the public in the entire Bay Area; and (5) accommodating a project that is consistent with either: (1) the Suisun Marsh Preservation Act and the Suisun Marsh Protection Plan; or (2) the Suisun Marsh Local Protection Program. Please explain how the project is consistent with one or more of these purposes.

2. Please explain:

(a) what possible effects the proposed fill would have on the Bay Area, such as: (1) any impact on the volume of Bay waters, on Bay surface area, or on the circulation of Bay water; (2) any impact on water quality; (3) any impact on the fertility of marshes or fish or wildlife resources; and (4) any impact on other physical conditions that exist within the area which would be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance; and

(b) how the nature, location, and extent of the proposed fill would minimize any possible harmful conditions or effects.

3. Please explain (a) why the fill proposed is the minimum amount necessary; and (b) why there is no alternative upland location for the project that would avoid the need for Bay fill.

4. If the fill is to be used for improving shoreline appearance or providing new public access to the Bay, please explain why it is physically impossible or economically infeasible to accomplish these goals without filling the Bay.

5. Please explain how the fill will result in a stable and permanent shoreline.

6. Please explain the steps that will be taken to assure that the project will provide reasonable protection to persons and property against hazards of unstable geologic or soil conditions or of flood or storm waters.

7. Please provide the names, addresses, and telephone numbers of any licensed geologists, engineers, or architects involved in the project design who can provide technical information and certify to the safety of the project.

8. Please describe in detail the anticipated impacts of the fill on the tidal environment, describe how these impacts will be addressed or mitigated, and explain how the public benefits of the project would exceed the public detriment from the loss of water area or marshlands.

9. For marina projects, please indicate how many berths, if any, are to be made available for live–aboard boats and explain how these live–aboard boats will contribute to public trust purposes.

10. Please identify any other specific policies of the McAteer–Petris Act (California Government Code Title 7.2, especially Section 66605), the Suisun Marsh Preservation Act (California Public Resources Code Sections 29000–29612), the San Francisco Bay Plan and the Suisun Marsh Preservation Plan, and the Commission's regulations regarding minor fill for improving public access and shoreline appearance, that are relevant to and offer support for the project and explain how the project is consistent with these policies.

BCDC Application Form 5

Box 6

Shoreline Band Information

("Shoreline band" means the land area lying between the Bay shoreline and a line drawn parallel to and 100 feet from the Bay shoreline. The Bay shoreline is the Mean High Water Line, or five feet above Mean Sea Level in marshlands.)

a. Types of activities to be undertaken or materials to be placed within the shoreline band:

_____

_____

b. Will the project be located within a water-oriented priority use area that is designated in the San Francisco Bay Plan?

❑ Yes ❑ No

If "No," go to section (c).

If "Yes," please indicate which priority use the area is reserved for:

_____

Will the project use be consistent with the priority use for which the site is reserved?

❑ Yes ❑ No

If "Yes," go to section (c).

If "No," please attach an explanation of how the project can be approved despite this inconsistency.

c. Total shoreline band area within project site: _____ square feet

d. Area within shoreline band to be reserved for non-public access uses: _____ square feet

e. Area within shoreline band to be reserved for public access: _____ square feet

f. **INFORMATION ABOUT THE SHORELINE WORK TO BE PROVIDED IN AN ATTACHMENT:**

1. Please describe the area, in square feet, to be covered by structures; used for roads; used for parking; used for pathways and sidewalks; covered with landscaping; used for shoreline protection; and used for other purposes (specify uses).
2. Please identify the total number of parking spaces in the project and within the shoreline band.
3. Please provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories.

Box 7 Public Access Information

a. Does public access to the shoreline or do views to the Bay presently exist on the project site or on a contiguous property?

❑ Yes ❑ No

If "Yes," please attach a description of the public access. If "No," explain what is preventing public access to the shoreline.

b. Will the project block public views of the Bay or adversely impact present or future public access to the shoreline?

❑ Yes ❑ No

Please describe why the project will or will not affect public views or public access to the shoreline. For most large projects, identify: (1) the existing number of people or employees using the site; and (2) the existing number of cars, bicycles, and pedestrians visiting the site and the level of service of all nearby roads leading to the site. Please describe how the project will change these factors. Please describe the impact the project is expected to have on the existing use of the site and on existing public views or physical public access at the site. Please describe the impact the project is expected to have on the public's use of existing nearby parks, public access, public parking and other recreational areas on the shoreline and the roads leading to the site.

c. Do public safety considerations or significant use conflicts make it infeasible to provide new public access to the shoreline on the project site?

❑ Yes ❑ No

If "Yes," please attach a description of the public safety considerations or significant use conflicts which make it infeasible to provide public access at the project site and either (1) identify an offsite area where public access to the shoreline is to be provided as part of the project and describe the proposed public access at a specified offsite location, or (2) provide an explanation as to why no offsite public access is proposed as part of the project.

d. SUMMARIZE THE PUBLIC ACCESS TO BE PROVIDED AS PART OF THE TOTAL PROJECT:

1. Total amount of public access: _____ square feet
2. Length of waterfront public access area: _____ feet
3. Number of parking spaces for public access area: _____
4. Area and width reserved for view corridor(s): _____ square feet

e. DETAILED INFORMATION ABOUT PUBLIC ACCESS TO BE PROVIDED IN AN ATTACHMENT:

Please describe, in square feet, length and width, when appropriate, the existing and proposed public access areas and improvements, including areas used for decks, piers, pathways, sidewalks, landscaping, parking, and other public features. Please describe how the public access area facilities would be accessible to handicapped persons. Please describe the connections to existing public streets or offsite public pathways. Specify how the public access will be permanently guaranteed (e.g., dedication, deed restriction, etc.).

Box 8 Dredging Information

a. Purpose of the dredging:

_____

b. Method of dredging:

_____

c.	Volume of material to be dredged from open waters, sloughs, creeks or tidal marshes:	_____	cubic yards
d.	Volume of material to be dredged from managed wetlands in the primary management area of the Suisun Marsh:	_____	cubic yards
e.	Total volume of material to be dredged:	[ ]	cubic yards
f.	Size of the area from which material will be dredged in open waters, sloughs, creeks or tidal marshes:	_____	square feet
g.	Size of the area from which material will be dredged in managed wetlands in the primary management area of the Suisun Marsh:	_____	square feet
h.	Total size of area to be dredged:	[ ]	square feet
i.	Location(s) where dredged material will be disposed:		

_____

j.	Total volume of material to be disposed:	[ ]	cubic yards
k.	Estimated future maintenance dredging required annually:	_____	cubic yards

l. ADDITIONAL INFORMATION TO BE PROVIDED IN AN ATTACHMENT:

1. If the dredged material is to be disposed of in the Bay, please explain why the material cannot be disposed of in the ocean, upland, or inland out of the Commission's jurisdiction.
2. Please describe the type of investigations that have been or will be carried out regarding the nature and content of the dredged material.
3. Please provide a copy of a water quality certification, waiver of water quality certification or waste discharge requirements for the dredging or disposal of dredged material from the California Regional Water Quality Control Board, San Francisco Bay Region.

Box 9 Government Approvals

☐ None Required

	Required YES	Required NO	Type of Approval	Date Approval Expected	Agency Contact and Phone Number
Relevant Local Government Approval(s):	☐ Yes	☐ No			
State Lands Commission:	☐ Yes	☐ No			
Regional Water Quality Control Board:	☐ Yes	☐ No			
				Approval Number:	
U.S. Army Corps of Engineers:	☐ Yes	☐ No			
				Public Notice Number:	
California Dept. of Fish and Game:	☐ Yes	☐ No			
Other (Specify):					
_____	☐ Yes	☐ No			
_____	☐ Yes	☐ No			
Federal Funding:	☐ Yes	☐ No			

BCDC Application Form 9

Box 10 Public Notice Information

a. Owners and residents of all properties located within 100 feet of the project site:

North:

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

South:

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

East:

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

West:

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

b. Other persons known to be interested in this project: ☐ None

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

Name: _____ _____

Address: _____ _____

City, State, Zip: _____ _____

Telephone: ____/_____ ____/_____

Box 11 Environmental Impact Documentation

a. Is the project statutorily exempt from the need for any environmental documentation?

❑ Yes ❑ No

If "Yes," please attach a statement supporting this statutory exemption.

b. Is the project categorically exempt from the need for any environmental documentation?

❑ Yes ❑ No

If "Yes," please attach a statement from the lead agency supporting this categorical exemption.

c. Has a government agency other than BCDC, serving as the lead agency, certified a "negative declaration" on the project?

❑ Yes ❑ No

If "Yes," please attach a copy of the certified negative declaration. If "No," please provide sufficient information to allow the Commission to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the permit; see Regulation Sections 10516 and 10625.

d. Has a government agency other than BCDC, serving as the lead agency, certified an environmental impact document on the project?

❑ Yes ❑ No

If "Yes," please attach copies of the certification and of the document. Also please provide a summary of the document if it is longer than 10 pages. If "No," please provide sufficient information to allow the Commission to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the permit; see Regulation Sections 10516 and 10625.

Box 12 Disclosure of Campaign Contributions

The following contributions of $250 or more were made by the applicant or applicant's agent to a BCDC commissioner or commissioner's alternate in the preceding twelve months to support the commissioner's or alternate's campaign for election to a local, state or federal office.

Contribution Made To:	Contribution Made By:	Date of Contribution:

❑ No such contributions have been made.

✓ Application Checklist ✓

	Major Permit	Administrative Permit	Regionwide Permit
❑ Application Form:	One fully completed and signed original and six copies	One fully completed and signed original	One fully completed and signed original
❑ Large Scale Project Site Plan	One copy*	One copy	One copy
❑ 8½"x11" Project Site Plan	Seven copies	One copy	One copy
❑ 8½"x11" Vicinity Map	Seven copies	One copy	One copy
❑ Proof of Legal Interest	One copy	One copy	One copy
❑ Local Government Approval	One copy	One copy	None
❑ Environmental Documentation	One copy of Environmental Determination and EIR or EIS Summary**	One copy of Environmental Determination**	None
❑ Notice of Pending Application	Posted at project site	Posted at project site	Posted at project site
❑ Certification of Posted Notice	One signed original	One signed original	One signed original
❑ Permit Processing Fee	$250–$10,000	$150–$5,000	$100
❑ Federal Consistency Processing Fee	None	None	None

*Additional drawings are needed for projects that are evaluated by the Commission's Design Review Board or Engineering Criteria Review Board.

**Please provide if available; otherwise the Lead Agency's certified document must be submitted before action on the permit - see Regulation Sections 10516 and 10625

The provisions of this form are self–explanatory and no other instructions are applicable.

NOTE: Authority cited: Sections 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65940–65942, 66605, 66632(b) and (f) and 84308, Government Code; Sections 2770, 2774, 21080.5, 21082, 21160 and 29520, Public Resources Code; and the San Francisco Bay Plan.

HISTORY

1. New Appendix D filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment of appendix and new NOTE filed 2–2–98; operative 3–4–98 (Register 98, No. 6).
3. Amendment of appendix and NOTE filed 7–11–2000; operative 7–11–2000 (Register 2000, No. 28).

[The next page is 569.]

Appendix E

NOTICE

DATE POSTED: _____ 19 _____

NOTICE IS HEREBY GIVEN THAT _____
HAS SUBMITTED AN APPLICATION TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION REQUESTING A PERMIT TO (brief description of work and uses)

_____

_____

AT A PROPERTY KNOWN AS (address or other property description)

_____

PERSONS INTERESTED IN THE PROJECT PROPOSED IN THE APPLICATION MAY REQUEST FURTHER INFORMATION AND NOTICE OF ANY HEARINGS BY WRITING TO THE COMMISSION AT THIRTY VAN NESS AVENUE, SUITE 2011, SAN FRANCISCO, CALIFORNIA 94102, OR BY TELEPHONING (415) 557-3686. THE APPLICATION AND ANY SUPPLEMENTARY MATERIALS MAY BE REVIEWED AT THE COMMISSION'S OFFICES. MEMBERS OF THE PUBLIC MAY COMMENT ON THE PROJECT PROPOSED IN THE APPLICATION. COMMENTS SHOULD BE SUBMITTED TO THE COMMISSION'S OFFICES IMMEDIATELY.

CERTIFICATION OF POSTING OF NOTICE

San Francisco Bay Conservation
and Development Commission
Thirty Van Ness Avenue, Suite 2011
San Francisco, California 94102

RE: _____
(brief description of project)

I _____, hereby certify
(name of applicant or agent)

that on _____, I or my agent or employee posted in a prominent location at or near the project
(date)

site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: _____ By: _____
(Signature)

Title: _____
(Title)

HISTORY

1. New Appendix E filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 4-18-90; operative 5-18-90 (Register 90, No. 18).

Appendix F

Application Exhibits

The following information must be included as exhibits to an application. Failure to include all the required information will prevent an application from being filed.

Proof of Legal Interest

It is necessary for the applicant of the land owner to have adequate legal interest in the underlying property to carry out the project and comply with any conditions that may be a part of the Commission's approval. This legal interest must be one of the following:

- A fee interest that allows the proposed activity.
- A sufficient easement that allows the proposed activity.
- A leasehold whose remaining period of occupancy is long enough to provide a reasonable amortization period for the proposed project and whose terms allow construction and use of the proposed project.
- An enforceable option if the property owner is a co–applicant.
- The authority and commitment to acquire the property by eminent domain.

If the applicant is a public agency, corporation, partnership or other legal entity, evidence must be provided to ensure that the person who signs the application is empowered to represent and make commitments on behalf of the organization submitting the application. To accomplish this, such applications must include either a resolution authorizing the person who signs the application to represent and bind the applicant or bylaws which establish that the person who signs the application holds a position that is empowered to act on behalf of the legal entity. Corporate resolutions must be from the corporation's board of directors. Public agency resolutions must be from the city council, board of supervisors or similar highest policy body which governs the organization.

To establish that the applicant or co–applicant has adequate legal interest in the property on which the project is to be built, it is necessary for the application to include a property map and either a recently issued title report, a copy of a grant deed (both of which must include a map and a metes and bounds description) or other information of similar accuracy and reliability to show that the applicant or co–applicant holds the interest in the project site. An applicant for a project that involves the placement of fill in San Francisco Bay for purposes other than shoreline protection or the repair of existing structures must provide a title report or other acceptable documentation that is no more than two years old.

The property map (or maps) must either be a copy of an official parcel map obtained from a county assessor's office annotated as follows or a specially prepared map showing the following:

- All property lines, easement lines, and current assessor parcel numbers for the property on which the project will occur.
- A metes and bounds description for all property lines and easement lines.
- A north arrow, graphic scale, project name, the shoreline, an identification of the exhibit as a property map, the date of the plan's preparation, and the name, address, and telephone of the person who prepared or annotated the map.

Plans and Maps

Every application must include a vicinity map and a project site plan.

The vicinity map must be either an 8-1/2″ x 11″ portion of a United States Geological Survey topographical map (7.5 minute series) or a similar 8-1/2″ x 11″ map which shows the project site in relation to the shoreline, major roadways, and other landmarks.

The project site plan must be at a scale which allows the details of the proposed project to be adequately illustrated. The plan (or set of plans if all the information cannot be shown on one drawing) must show exactly the nature, scope and location of the proposed work and clearly distinguish between existing and proposed conditions. The plan must include all of the following specific elements:

- The shoreline.
- A line 100 feet inland from the shoreline.
- Any salt ponds, managed wetlands, marshes or mudflats on the project property.
- Property lines.
- Location and names of nearby roads, streets or highways.
- All major utilities.
- Existing control points, important geographic, topographic or physical features, and all major fixed objects and structures on the project site.
- Existing and proposed topography, including especially the existing and proposed top and toe of the bank if solid fill, excavation or dredging is proposed in the application.
- Existing and proposed improvements.
- Existing and proposed building elevations.
- Existing and proposed public access areas, including any areas that will be reserved for public access as part of the project development and any improvements that are proposed to be made in the public access area, such as parking, landscaping, pathways, benches, etc.
- A north arrow, graphic scale, project name, an identification of the exhibit as a project site plan, the date of the plan's preparation, and the name, address and telephone number of the person who prepared the plan.

In addition to providing a large scale project site plan, applicants for major projects must also provide seven high quality copies of an 8-1/2" x 11" reduction of the site plan. Applicants for minor repairs or improvements or routine maintenance projects need to provide only one high quality 8-1/2" x 11" reduction of the project site plan.

In some cases, instead of providing high quality 8-1/2" x 11" reductions that are suitable for reproduction, applicants may furnish 235 copies of exhibits of another size. Applicants should consult with the Commission's staff to determine if this option is appropriate.

Environmental Documentation

The California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) require that the environmental impacts of a proposed development be assessed before any permit is granted for the project. These laws include specific exemptions for activities that have insignificant environmental impacts. If the project is covered by one of these exemptions, a brief statement must be provided to document this statutory exemption and cite the statutory section exempting the project. If available, this statement should be the environmental determination by the lead agency.

Similarly, other activities fall within categories that do not require the preparation of environmental impact documentation. If the project is covered by one of these exemptions, a statement must be provided to document this categorical exemption and cite the regulation section exempting the project. If available, this statement should be the environmental determination by the lead agency.

If another government agency has certified a "negative declaration" on the project, a copy of the declaration prepared in accordance with NEPA must be included with the application, and a copy of the declaration prepared in accordance with CEQA may be included with the application.

If the project requires the preparation of an environmental impact document to comply with NEPA, the document certified by the lead agency must be included with the application. If the document is longer than ten pages, a summary of the document not longer than ten pages must be included with an application for a major project.

If the project requires the preparation of an environmental impact document to comply with CEQA, the lead agency's certification and the document may be included with the application. If the document is longer than ten pages, a summary of the document not longer than ten pages must be included with an application for a major project. Note that when the certification and document are not submitted with the application, they must be submitted before the Commission considers and takes action on the application; see Sections 10516 and 10625.

HISTORY

1. New Appendix F filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Amendment filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Amendment of Environmental Documentation section filed 1–26–98; operative 2–25–98 (Register 98, No. 5).

Appendix G

HISTORY
1. New Appendix G filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer filed 4–18–90; operative 5–18–90 (Register 90, No. 18).
3. Editorial correction restoring HISTORY 1 and adding HISTORY 2 (Register 95, No. 17).

Appendix H

Violation Report/Complaint for the Administrative Imposition of Civil Penalties

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU OR IN A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this violation report/complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and references to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. You can arrange to review these materials at the Commission's office or to have copies made at your expense or both by contacting _____ of the Commission's staff at telephone number 415-557-3686. The staff also intends that the report inform you of the nature of the possible violation so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for the Commission enforcement proceedings.

Receipt of the report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing and the Commission will determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible _____ of the Commission's staff at telephone number 415-557-3686. Thank you for your cooperation.

1. Person or persons believed responsible for illegal activity:

_____
_____
_____
_____

2. Brief description of the nature of the illegal activity:

_____
_____
_____
_____
_____
_____
_____
_____

3. Description of and location of property on which illegal activity occurred:

_____
_____
_____

4. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

5. Approximate date (and time if pertinent and known) illegal activity occurred:

6. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's offices for your review; you should call the above listed staff enforcement officer to arrange to review the file):

7. Provisions of law or Commission permit that the staff alleges has been violated:

8. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding, the amount of the proposed penalty:

9. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violation:

HISTORY:

1. New Appendix H filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

Appendix I

Statement of Defense Form

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SF BAY COMMISSION STAFF OR TO CONTACT _____ OF THE SF BAY COMMISSION ENFORCEMENT STAFF BY _____, 19___ MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SF BAY COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SF BAY COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease and desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE

ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can and as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the following address:

San Francisco Bay Conservation and Development Commission
30 Van Ness Avenue, Suite 2011
San Francisco, California 94102

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, and send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise completed the form as much as is currently possible will he grant an extension to complete the form.

If the staff violation report/complaint that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible _____ _____ of the Commission Enforcement Staff at telephone number 415-557-3686.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. Any other information, statement, etc. that you want to make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title and enclose a copy with this completed form):

_____

_____

_____

_____

_____

7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory. _____

_____

_____

_____

_____

_____

HISTORY:

1. New Appendix I filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

Appendix J

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, Room 2011
San Francisco, California 94102

TO BE FILLED IN BY BCDC

1. **Claim Number:** _____
2. **Date Claim Filed:** _____
3. **Date Claim Mailed to Other Agencies:** _____
4. **Date of Hearing:** _____

CLAIM OF EXEMPTION FROM BCDC PERMIT REQUIREMENTS FOR A PROJECT INVOLVING FURTHER FILL

This form is to be used in filing a claim of exemption from BCDC permit requirements for a project involving fill in the Bay, a salt pond, or a managed wetland after January 1, 1974. The form is designed to obtain sufficient detailed information about the project claimed to be exempt so that the Commission can determine the validity of the claim and the scope of the project. The questions relate to (1) the law under which the Commission operates (Government Code Title 7.2), especially the grandfather clauses, Sections 66632.1, 66655, and 66656 of the Government Code; (2) the Commission's procedural regulations, especially Sections 10910 through 10921; and (3) the relevant case law, in particular BCDC v. Emeryville, 69 Cal.2d 533, the leading case in the matter of exemptions from BCDC permit requirements. Copies of all three are available at the Commission's office, and the Commission's staff can help explain them as they affect any particular claim.

Each question must be fully answered. Those questions with space for an answer on this form may be answered on the form. Answers to the remaining questions should be on a separate sheet of paper with the answer keyed to the number of the question. Both this form and the answer sheet are part of the application, and they should be submitted together to the Commission prior to April 1, 1974, the last day for filing claims of exemption under the law. Exhibits may be attached to either the form or the answer sheet.

THE CLAIMANT

1. Name: _____
2. Address: _____ Telephone: _____
3. Representative: _____ Telephone: _____
4. If the claimant is a governmental entity, a partnership or a corporation, attach a document, such as a corporate or governing body resolution, indicating that the person who signs the claim has been authorized to act on behalf of the claimant in all matters concerning the claim. Mark the document Exhibit A.

PROJECT LOCATION AND OWNERSHIP

5. County(ies): _____
6. City(ies): _____
7. Street Address and Assessor Parcel Number(s): _____
8. Total area involved _____ acres. Of this, the area covered by water at some or all times of the year is _____ acres.

9. Attach a legal description of all property involved in the claim with a map showing lot lines, easements, major utilities, etc., and a document indicating the claimant's legal interest in the property. Mark the documents Exhibit B.

PROJECT DESCRIPTION

10. Fully describe any project that is claimed to be exempt under Section 66632.1 or Section 66656 of the Government Code. This description must include the following information:

a. A precise description of the plan for the project as of September 17, 1965, including the exact nature and location of land uses.

b. A description of all entities, such as partnerships, corporations, special districts, etc., that had been organized to carry out the project as of September 17, 1965.

c. A detailed explanation of all financial arrangements that had been made as of September 17, 1965, to finance the project.

d. A description of all engineering, architectural, and planning services, including costs, incurred as part of the project as of September 17, 1965, and after all necessary approvals and Corps of Engineers' permits had been obtained.

e. A description of all equipment purchased, leased or rented as part of the project as of September 17, 1965, and after all necessary local approvals and Corps of Engineers' permits had been obtained, including costs, purposes for which the equipment was obtained, when obtained, the length of time used, etc.

f. A description of any other contractual obligations entered into as part of the project as of September 17, 1965, and after all necessary local approvals and Corps of Engineers' permits had been obtained, including the parties to the contract, the date of the contract, the purposes for which the contract was entered into, the costs incurred under the contract, etc.

g. A history of the project on a year–to–year basis from the date of commencement to September 17, 1965, include a precise description of all diking or filling that took place prior to September 17, 1965, and that indicates the amount of fill that had been placed and the extent of any dikes that had been constructed.

11. Fully describe any project for which a vested right is claimed under Section 66655 of the Government Code. This description must include the following information:

a. A precise description of the use or uses for which a vested right is claimed, including the exact nature and location of such uses.

b. A precise description of all liabilities incurred for work and materials, and of all work commenced and performed, as of September 1, 1969, in good faith and in reliance on any city or county ordinance or permit authorizing the use or uses for which a vested right is claimed.

c. An identification of each city or county ordinance or permit authorizing the use or uses for which a vested right is claimed and on which reliance was placed in good faith.

12. For any project for which an exemption is claimed under Section 66632.1 of the Government Code or Section 66656 of the Government Code, describe all activity that has taken place with regard to the project since September 17, 1965, including each of the aspects of the project included in the description of the project in the answer to question 10.

13. For any project for which a vested right is claimed under Section 66655 of the Government Code, describe all activity that has taken place with regard to the project since September 1, 1969, including each of the aspects of the project included in the description of the project in the answer to question 11.

14. Summarize in chronological order each governmental action that has been taken with regard to the project. Include any mention of dated drawings, plans or applications that were submitted to any governmental entity with regard to the project and indicate the name of the person at each governmental agency who has custody of such drawings, plans or applications.

15. Describe precisely the amount, location, and timing of any fill to be placed subsequent to January 1, 1974, as part of the project, including the nature and location of future uses.

16. Explain why the project has not been completed.

17. Does any circumstance prevent or delay realization of the project as originally planned? If so, explain fully.

18. Has the project been changed in any manner either since September 17, 1965, if an exemption is claimed under Section 66632.1 or Section 66656, or since September 1, 1969, if a vested right is claimed under Section 66655? If so, explain in detail each alteration that has been made. Indicate whether any governmental approvals were required for the change and the date such approval was granted.

EXHIBITS

A [Exhibit A is described in the first section of the form entitled "THE CLAIMANT."]

B [Exhibit B is described in the second section of the form entitled "PROJECT LOCATION AND OWNERSHIP."]

C As Exhibit C, attach one drawing, 8–1/2 by 11 inches in size and suitable for reproduction with a graphic bar scale and north arrow, showing all aspects of the project claimed to be exempt or for which vested rights are claimed. Indicate areas that have been filled or diked with dates and areas that remain to be filled or diked.

D As Exhibit D, attach one drawing, 8–1/2 by 11 inches in size and suitable for reproduction and showing the project in relation to nearby roads, the shoreline as it presently exists and as it existed on September 17, 1965.

[**NOTE:** If the claimant believes that a drawing of a different size will better explain the project, he may submit 150 copies of each drawing of a different size, instead of one 8–1/2 by 11 inch drawing.]

E As Exhibit E, attach any photographic or written evidence showing that filling or diking or both had begun prior to September 17, 1965, and indicating the amount of any fill that had been placed and the extent of any dikes that had been constructed.

F As Exhibit F, attach a copy of each permit, approval, disapproval, letter of permission, or other written evidence of action taken by each governmental agency, such as the Corps of Engineers, the City or County, the State Lands Commission, etc., having jurisdiction over the project claimed to be exempt or for which a vested right is claimed; or if no action was taken by a governmental agency having jurisdiction, an explanation of why.

G. As Exhibit G, attach a map showing the physical relationship of the property and any area filled or to be filled to nearby confirmed survey lines, points, elevations, or other references, such as bench marks, triangulation points, U.S. pierhead and bulkhead lines, etc.

CERTIFICATION

I understand that further information may be required in the course of the proceedings on this claim, and I declare under penalty of perjury that the information in this application and all accompanying exhibits, and any further information and exhibits furnished by me to the Commission supplementing this application, is and will be, to the best of my knowledge, true and correct. I further understand that any material misstatement or omission of fact may be grounds for reopening proceedings on any claim recognized by the Commission.

Executed in the County or City and County of _____
on _____

_____
Claimant

HISTORY

1. New Appendix J filed 3–18–87; operative 8–17–87 (Register 87, No. 30).

Appendix
K

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, Room 2011
San Francisco, California 94102

TO BE FILLED IN BY BCDC

1. Claim Number: _____
2. Date Claim Filed: _____
3. Date Claim Mailed to Other Agencies: _____
4. Date of Hearing: _____

CLAIM OF EXEMPTION
(PUBLIC RESOURCES CODE SECTION 29,507)

This form is designed to obtain sufficiently detailed information about the project claimed to be exempt from BCDC permit requirements so that the Commission can determine the validity of the claim and the scope of the project. The questions relate to (1) the law under which the Commission operates (Government Code, Title 7.2 and Public Resources Code, Division 19) with special reference to Public Resources Code Section 29507, (2) the Commission's procedural regulations, especially Sections 10910 through 10921 which will apply (see Public Resources Code Section 29520(a)) and (3) the relevant case law, in particular BCDC v. Emeryville, 69 Cal. 2d 533, the leading case in the matter of exemptions from BCDC permit requirements. Copies of all three are available at the Commission's office, and the Commission's staff can help explain them as they affect any particular claim.

THE CLAIMANT:

1. Name: _____
2. Address: _____ Telephone: _____
3. Representative: _____ Telephone: _____

If the claimant is a governmental entity, a partnership or a corporation, attach a document indicating that the person who signs the claim has been authorized to act on behalf of the claimant in all matters concerning the claim. Mark the document Exhibit A.

PROJECT LOCATION AND OWNERSHIP:

5. County(ies): _____
6. City(ies): _____
7. Street Address and Assessor Parcel Number(s): _____
8. Total area involved _____ acres. Of this, the area covered by water at some or all times of the year is _____ acres, the area covered by a typical salt pond and brackish marsh vegetation is _____ acres, and the area managed for duck hunting or game preserve purposes is _____ acres.
9. One sentence description of the project claimed to be exempt:

_____

_____

10. Attach a legal description of all property involved in the claim with a map showing lot lines, easements, major utilities, etc., and a document indicating the claimant's legal interest in the property. Mark the documents Exhibit B.

PROJECT DESCRIPTION:

11. List all governmental approvals which have been obtained (including permits issued by BCDC, all local permits, federal agency approval, etc.). List the date of approval and describe the type of approval.
12. List any governmental approvals which have not yet been obtained and anticipated dates of approval.
13. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

14. Fully describe the project for which vested rights are claimed. This description must specify the nature and extent of work and uses in progress or completed, including: (a) date each portion commenced (e.g., each use, filling, dredging, etc.); (b) governmental approval pursuant to which each portion was commenced; (c) portions completed and date of completion of each portion; (d) status of each portion on January 1, 1978; (e) status of each portion on date of claim; and (f) amounts of money expended on portions of work both completed or in progress, excluding expenses in obtaining governmental approvals.
15. Describe any changes or revisions in the project or the site which have been made subsequent to commencement of the project.
16. Describe those portions of the project remaining to be constructed.
17. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.
18. State the expected total cost of the project, excluding expenses incurred in securing any necessary governmental approval.
19. Is the project planned as a series of phases or segments? If so, explain.
20. When is it anticipated that the total project would be completed?

EXHIBITS:

A and B (Exhibits A and B are described in the first section of the form entitled "THE CLAIMANT")

C. SITE PLAN. Attach one drawing, 8½ by 11 inches in size and suitable for reproduction with a graphic bar scale and north arrow, showing all aspects of the project for which vested rights are claimed. Indicate areas that have been filled, diked or dredged with dates and areas that remain to be filled, dredged or diked.

D. VICINITY MAP. The vicinity map must show where the work would be done in relation to the surrounding area, including major highways, the Bay, other waterways, and important geographic features. The map should provide enough information to allow a person unfamiliar with the area to find the site from the nearest well-known boulevard or freeway.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT/PROJECT STATUS. Any environmental impact report or negative declaration prepared for the project must be submitted. If no document was prepared, explain why no document was necessary.

F. PRIOR APPROVALS. Attach a copy of each permit, approval, disapproval, letter of permission, or other written evidence of action taken by each governmental agency other than this agency having jurisdiction over the project for which a vested right is claimed; or if no action was taken by a governmental agency having jurisdiction, an explanation of why.

CERTIFICATION:

I understand that further clarifying information may be required in the course of the proceedings on this claim, and I declare under penalty of perjury that the information in this application and all accompanying exhibits, and any further information and exhibits furnished by me to the Commission supplementing this application is, and will be, to the best of my knowledge, true and correct. I further understand that any material misstatement or omission of fact may be grounds for reopening proceedings on any claim recognized by the Commission.

Executed in the County or City and County of _____

on _____

_____

Claimant

HISTORY:

1. New Appendix K filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Appendix
L

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
Thirty Van Ness Avenue, Room 2011
San Francisco, California 94102
Telephone: (415) 557-3686

TO BE FILLED OUT BY BCDC:

1. Appeal Number: _____
2. Filed: _____
3. Notice Received: _____
4. Twenty-First Day: _____
5. Forty-Second Day: _____
6. Staff Assigned: _____

APPEAL FROM MARSH DEVELOPMENT PERMIT DECISION OF LOCAL GOVERNMENT

APPELLANT(S):

1. Name(s), address(es), and telephone number(s) of appellant(s): _____
2. Name(s), address(es), and telephone number of appellants' representative, if any: _____
3. The local governmental action was taken by _____. The action was taken on _____ and is or is not final (circle one). If the action is not final, an appeal may be taken to _____ within _____ days of _____. The knowledgable local official is _____ who may be contacted at _____.
4. Name of development and Marsh Development Permit Number, if any: _____
6. Brief description of development location (city or county, nearest roads, etc.): _____
7. Describe the marsh development permit action of the local government (e.g., approval, approval with conditions, etc.): _____
8. Attach a complete, but brief, statement of facts explaining and substantiating why the proposed development does not conform with the certified Suisun Marsh Local Protection Program or Program Component. The statement should refer to all applicable policies, ordinances, and regulations by name and page number.
   The appellant must demonstrate to the Commission that the appeal raises a substantial issue. The Commission shall hear an appeal unless it determines that the appeal raises no substantial issue as to conformity of the proposed development with the provisions of the certified Suisun Marsh Local Protection Program. *

* The Suisun Marsh Preservation Act provides that the Commission must hear an appeal if a substantial issue of compliance exists with either the Marsh Act, the Marsh Plan, or the certified Local Protection Program. However, the Act also provides that the Commission must issue a marsh development permit on appeal unless a substantial issue of compliance exists with the certified Local Protection Program. Therefore, this appeal form strongly encourages an appellant to limit his or her discussion and analysis to issues of compliance with the certified Local Protection program.

CERTIFICATION:
I declare that the foregoing is true and correct to the best of my knowledge and I understand that any misstatement or omission of the information requested may be grounds for rejection of this appeal.
Dated: _____ _____
(Signature of appellant or representative)

HISTORY:
1. New Appendix L filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Appendix M

Commission Permit Application Fees
July 9, 2004

(a) All applicants for a Commission permit, permit amendment or amendment to an application shall submit as part of the application an application fee as identified in the following sections.

(b) The following permit application fees shall be effective until December 31, 2004 or until the Executive Director calculates the following year's fees under subsection (c), whichever is later.

Type of Permit Application	*Application Fee*
Abbreviated Regionwide Permit	$160
Regionwide Permit	$320
First Time Extension for any permit	$160
Nonmaterial Amendment to permit, including Subsequent Time Extension	$320
Material Amendment to permit	Same as for first time application
Material Amendment to application	75% of original application fee
Emergency Permit	Same as for project as if not an emergency
Minor Permit with a total project cost (TPC) of:	
(1) less than $300,000	$480
(2) $300,000 to $10 million	0.16% of TPC
(3) more than $10 million	$16,000
Major Permit with a total project cost (TPC) of:	
(1) less than $250,000	$800
(2) $250,000 to $10 million	0.32% of TPC
(3) more than $10 million	$32,000

(c) Calculation of Permit Fees for Subsequent Years

(1) No earlier than July 1 and no later than October 1 of each year, the Executive Director shall calculate the permit application fees that will apply to applications received in the following calendar year.

(2) The permit application fees shall be calculated in the following way:

(A) Calculate the target revenue that is 20 percent of the Commission's total regulatory program costs, as defined in subsection (3), for the current state fiscal year.

(B) Calculate the previous revenue that is the sum of all permit application fees received in the previous fiscal year.

(C) Calculate the adjustment factor by dividing the target revenue by the previous revenue.

(D) Adjust the permit application fees by multiplying each fee by the adjustment factor.

(3) The "total regulatory program costs" shall be based on the amount of revenue appropriated to support the Commission's regulatory program in the Budget Act for that fiscal year. The total regulatory program costs shall be calculated by: (A) identifying the direct costs for employee compensation, contracts, and equipment and facilities that are allocated to the Commission's permit and enforcement activities; (2) adding to the direct costs the indirect costs such as administrative, legal, and other support allocated to the regulatory program; and (3) subtracting any reimbursements, grants, abatements or other income received to support regulatory program activities.

(4) The adjusted fees shall be effective on January 1 of the following calendar year and shall remain effective for twelve months or until the Executive Director calculates the following year's fees, whichever is later. All calculated figures shall be rounded up to the nearest dollar.

(d) Total Project Cost.

(1) "Total project cost," means all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction.

(2) The Commission shall use the cost stated by the applicant in the application to BCDC to determine the total project cost unless the Executive Director determines that the amount stated does not appear to include the total project or to reflect accurately all project costs.

(3) Whenever the Executive Director determines that the stated project cost does not appear to include the total project or to reflect accurately all project costs, he or she shall return the application unfiled and state his or her reasons for concluding that the total project is not included or why the stated cost does not accurately reflect all project costs or the Executive Director shall hold the application unfiled until the applicant verifies the total cost figures by having an estimator selected by the Executive Director and prepaid by the applicant review and certify as complete and accurate all project costs.

(e) Fees for Projects Involving More than One Category. Projects involving two (2) or more categories, (i.e., shoreline construction and filling as part of one (1) project), will not be charged the total of the fees that would be due if each part of the project were considered as a separate application. Rather, the fee is the single amount due under highest fee category into which the project falls.

(f) When Fees are to be Paid. All fees shall be paid before the Commission files a permit application. No fees shall be charged for preliminary inquiries and requests for information prior to the filing of an application.

(g) Refunds.

(1) A $100 refund of an administrative permit application fee shall be made if the application is withdrawn prior to the mailing of the administrative listing for the application. No refund shall be made for an administrative permit application after listing.

(2) For all other fees, the first $200 hundred dollars is not refundable and the remainder shall be refunded if the application is withdrawn prior to mailing notice of a public hearing either on whether the application is complete or on whether the project is consistent with the applicable Commission policies but shall not be refunded after the notice of the public hearing has been mailed.

(h) Fees in Special Circumstances.

(1) The fee for resubmitting an application that had earlier been denied by the Commission or withdrawn by the applicant before a Commission vote shall be seventy–five percent (75%) of the fee that would be charged for a new application covering the same work. Such fee shall be in addition to the fee charged for the original application.

(i) Fees for Applications Arising from an Enforcement Investigation.

(1) The Commission shall double all relevant application fees if the Executive Director determines that the applicant submitted the application in response to an investigation by the staff or the Commission of a possible violation of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or the terms or conditions of a permit.

(2) Applications shall be presumed to have arisen out of an enforcement investigation if the staff prepared a written enforcement report prior to the applicant presenting the application for filing.

(j) Appeal of Fee Determination.

(1) Any person who believes a fee charged is not correct under these regulations may appeal to the Commission any objection that the applicant, the Executive Director, and the Chair cannot resolve.

(2) Pending resolution of the amount of the fee, the applicant shall pay the fee that the Executive Director assesses and shall file a letter explaining why the fee is incorrect.

(3) When an applicant appeals a fee, the Commission shall determine the correct fee at the time it votes on the application or at the time for commenting on the administrative listing, whichever applies.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66632(b), Government Code; and Section 29520(b), Public Resources Code.

HISTORY

1. New Appendix M (combination and amendment of former sections 10330–10338) filed 11–20–91; operative 12–20–91 (Register 92, No. 8).
2. Amendment of Appendix M and amendment of NOTE filed 10–14–2004; operative 10–14–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 42).

Appendix N

√	Application Checklist	
		Abbreviated Regionwide Permit
☐	Abbreviated Application Form:	One fully completed and signed original
☐	Large Scale Project Site Plan	One Copy
☐	8 1/2″ x 11″ Project Site Plan	One Copy
☐	8 1/2″ x 11″ Vicinity Map	One Copy
☐	Proof of Legal Interest	One Copy
☐	Permit Processing Fee	As Specified in Appendix M
	* Additional drawings are needed for projects that are evaluated by the Commission's Design Review Board or Engineering Criteria Review Board.	

Box 1

Applicant Information

a. PROPERTY OWNER: ☐ Individual ☐ Private Entity ☐ Government ☐ Non–profit

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____ / _____ / _____

b. OWNER'S REPRESENTATIVE: ☐ None

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____ / _____ / _____

Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Owner Date

_____
Printed Name of Owner

c. APPLICANT: ☐ Individual ☐
Private Entity

☐ Government ☐
Non–profit

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____ / _____ / _____

(Continued on Page 2)

(Applicant Information Continued from Page 1)

d. APPLICANT'S REPRESENTATIVE: ☐
None

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____/_____/_____
Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Applicant Date

_____
Printed Name of Applicant

e. CO–APPLICANT: ☐ None ☐ Individual ☐ Private Entity ☐ Government ☐ Non–profit

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____/_____/_____

f. CO–APPLICANT'S REPRESENTATIVE:
None

Name: _____
Address: _____
City, State, Zip: _____
Telephones: _____/_____/_____
Affiliation to Applicant: _____

I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.

_____ _____
Signature of Applicant Date

_____
Printed Name of Applicant

Box 2

Certification of Accuracy of Information

I hereby certify under penalty of perjury that to the best of my knowledge the information in both Part I and Part II of this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Signature of Owner or
Owner's Representative

Date

Signature of Applicant or
Applicant's Representative

Date

Signature of Co–applicant or
Co–applicant's Representative

Date

Box 3 Project Information

a. Project Name: _____

b. Project Description: _____

_____

_____

c. Date work is expected to begin: _____

Date work is expected to be completed: _____

d. Does the project involve the placement of fill of any type in San Francisco Bay or within a salt pond, a managed wetland, or a certain waterway?

☐ Yes ☐ No

If "Yes," complete Box 5.

e. Does the project involve development within the shoreline band around San Francisco Bay?

☐ Yes ☐ No

If "Yes," complete Box 6.

f. Total Project Cost: $_____

Box 4 Site Information

a. Street Address: _____

b. City, County, State, Zip: _____

c. Assessor's Parcel Number(s): _____

☐ None

d. ID number(s) of previous BCDC permit(s) issued for work on this site: _____

☐ None

e. Provide a brief description of the existing condition of the site, including the present elevations, current vegetation, existing structures and use of the site.

Box 5

Bay Fill Information

("'Fill' means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks" Cal. Gov. Code Section 66632(a))

a. What is the basic purpose of the new fill in the Bay?

_____

_____

b. Total volume of water, marsh, or salt pond to be filled: _____ cubic yards

c. Area to be covered with solid fill: _____ square feet

d. Area to be covered with floating fill: _____ square feet

e. Area to be covered with pile–supported fill: _____ square feet

f. Area to be covered with cantilevered fill: _____ square feet

g. Area to be covered with any other type of fill. (Specify type of fill):

_____ square feet

h. Total area to be filled: [ ] square feet

Box 6

Shoreline Band Information

("Shoreline band" means "...all territory located between the shoreline of San Francisco Bay...and a line 100 feet landward of and parallel with that line..." Cal. Gov. Code Section 66610(b))

a. Types of activities to be undertaken or materials to be placed along the shoreline:

_____

_____

b. Will the project be located within a water–oriented priority use area that is designated in the San Francisco Bay Plan?

☐ Yes ☐ No

If "No," go to section (c).
If "Yes," indicate which priority use the area is reserved for:

_____

Will the project use be consistent with the priority use for which the site is reserved?

☐ Yes ☐ No

If "Yes," go to section (c).
If "No," attach an explanation of how the project can be approved despite this inconsistency.

c. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories:

_____

_____

_____

NOTE: Section 66632, Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 65940–65942, 66632(b) and (f) and 84308, Government Code; Sections 21080.5, 21082 and 29520, Public Resources Code; and San Francisco Bay Plan.

HISTORY

1. New Appendix N filed 8–6–96; operative 9–5–96 (Register 96, No. 32).
2. Amendment of application checklist and new NOTE filed 10–14–2004; operative 10–14–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 42).

Chapter 18. Selection of Consultants to Provide Selected Professional Services in the Following Areas: Architecture, Landscape Architecture, Engineering, Land Surveying, Environmental, and Construction Project Management

§ 11810. Prohibition Against Unlawful Practices.

(a) No person or entity seeking the award of a contract for consultant services pursuant to this chapter shall offer any rebate, kickback, or other unlawful consideration to any Commission member or Commission staff member.

(b) No Commission member of Commission staff member shall accept any rebate, kickback, or other unlawful consideration in connection with the process of selecting a Commission consultant pursuant to this chapter.

(c) No Commission member or Commission staff member shall participate in any way in the selection of a Commission consultant pursuant to this chapter if the Commission member or Commission staff member has a "financial interest" in the person or entity seeking the consultant contract.

(d) The Executive Director shall give notice to all Commission members and Commission staff members on January 2 of each year that state law prohibits those Commissioners and Commission staff members who participate in the award of any consultant contract pursuant to this chapter from receiving any form of rebate, kickback, or other unlawful consideration from any person or entity who seeks such a contract or from having a "financial interest" in any person or entity who seeks such a contract.

(e) The Executive Director shall also ensure that any request for an annual statement of qualifications and performance data published pursuant to section 11830 of this chapter, any request for a statement of qualifications and performance data published pursuant to section 11850 of this chapter, and the contract itself shall also include language that specifically prohibits any form of rebate, kickback, or other unlawful consideration and that prohibits any person who has a financial interest in the outcome of the selection process from participating in the selection process in any way.

NOTE: Authority cited: Section 66632(F), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New chapter 18 and section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).
2. Editorial correction moving Chapter 18, sections 11810 through 11890, after Appendix M following section 11718 (Register 95, No. 17).

§ 11820. List of Small Businesses That Provide Services in the Following Areas: Architecture, Landscape Architecture, Engineering, Land Surveying, Environmental Services, or Construction Project Management.

(a) The Executive Director shall prepare as of January 1, 1995 and shall update biannually thereafter a list of small businesses as defined by the Director of General Services under Cal. Govt. Code section 14837 that provide any one or more of the following services generally within the Commission's jurisdiction: architectural, landscape architectural, engineering, land surveying, environmental services, or construction project management.

(b) The Executive Director shall mail at least 60 days prior to January 1, 1995 and thereafter at least 60 days prior to the date of the biannual update an announcement of his or her intent to prepare or update the list. The announcement shall include a description of the information required by subsection (c) to be included on the list. The Executive Director shall mail the announcement to all persons or entities that he or she believes may be interested in being included on the list and shall also cause the announcement to be published at least 60 days prior to January 1, 1995 and at least 60 days thereafter prior to the date of the biannual update in each and every publication listed in section 11830(c).

(c) Each small business who wants to be listed by the Executive Director pursuant to subsection (a) shall provide the following information in writing to the Executive Director: (1) the name, address, and telephone number of the person or entity responding, (2) the area or areas of expertise of the person or entity responding, (3) the name of a contact person at the person or entity responding, and (4) a declaration under penalty of perjury that the person or entity qualifies as a small business as that term is defined under Cal. Govt. Code section 14837.

(d) The Executive Director shall add to the list required by subsection (a) any person or entity who establishes at any time that the person or entity qualifies as a small business, who provides one or more of the services covered by this chapter, and who provides the information required in subsection (c) to be included on the list.

NOTE: Authority cited: Section 66632, Government Code; Section 29201(e), Public Resources Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11830. Annual Statements of Qualifications and Performance Data.

(a) Within 30 days of the effective date of these regulations and thereafter prior to December 1 of each year, the Executive Director shall mail a "Request for An Annual Statement of Qualifications and Performance Data" to all of the following persons and entities:

(1) every small business included on the list required by section 11820;

(2) every provider of architectural, landscape architectural, engineering, land surveying, environmental, or construction management services with whom the Commission has had a contract at any time during the past three years; and

(3) every provider of such services who has submitted a statement of qualifications and performance data within the last three years.

(b) The "Request For An Annual Statement of Qualifications and Performance Data" shall contain the following information:

(1) a brief request for a statement of qualifications and performance data and a brief explanation of the reason for the request and how the statement will be used in hiring consultants;

(2) the type of service or services that the statement should cover;

(3) the name, address, and telephone number of the Commission staff member to whom the statement should be directed; and

(4) a request for the specific information required to be included in a statement of qualifications and performance data by section 11860.

(c) No later than December 1 of each year, the Executive Director shall also publish the request for annual statements of qualifications and performance data in the publications of each of the following professional organizations:

(1) for architectural services: the local chapters of the American Institute of Architecture

(2) for landscape architectural services: the American Society of Landscape Architects

(3) for engineering services: California Builder and Engineer

(4) for land surveying services: California Consulting Engineer and Land Surveyor

(5) for environmental services: the American Planning Association, California Chapter; the Association of Environmental Professionals; or the Association of Wetland Scientists

(6) for construction management services: California Builder and Engineer

(d) Any person or entity may submit a statement of qualifications and performance data to the Executive Director at any time and the Executive Director shall add the statement to the list of statements that he or she maintains so long as the statement contains all of the information required by section 11860.

(e) The Executive Director shall keep all statements of qualifications and performance data on file for at least three years.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527, Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11840. Establishment and Announcement of Criteria on Which Consultant Will Be Chosen.

(a) Prior to publishing any request for statements of qualifications and performance data as part of the selection of a consultant pursuant to this chapter, the Executive Director shall establish the criteria that he or she will use to rank the persons and entities who submit a statement of qualifications and performance data or who already have a statement of qualifications and performance data on file.

(b) These criteria shall be in writing and shall be made part of the file for the award of the contract.

(c) The Executive Director shall use only the criteria in determining the relative rankings from highest to lowest of all persons and entities who submit a statement of qualifications and performance data.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11850. Publication and Mailing of Requests for Statements of Qualifications Prior to Selection of a Consultant.

(a) At least 60 days prior to the date on which the Executive Director intends to commence the selection of a consultant pursuant to this chapter, the Executive Director shall mail and publish a request for statements of qualifications and performance data.

(b) The request for statements shall include the following information:

(1) the purpose for which the consultant will be required;

(2) the nature of the specific work that the consultant will perform;

(3) the time frame within which the work must be completed;

(4) the name, address, and telephone number of the staff member to whom inquiries should be directed and to whom statements of qualifications and performance data should be directed to be included in the selection process;

(5) that date by which a statement of qualifications and performance data must be received to be considered in the selection process;

(6) the criteria upon which the ranking of consultants will be made prior to entering into negotiations with the highest ranking consultant; and

(7) the specific information required to be included on a statement of qualifications and performance data as required by section 11860; and

(8) any other information that the Executive Director believes will allow the consultant to perform the required work in an efficient and complete manner.

(c) The Executive Director shall publish the request for statements either in one of the professional society publications listed in section 11830(c) or in at least one other publication of a professional society that represents the discipline from which the Commission seeks a consultant.

(d) The Executive Director shall also mail the request for statements to all of the following persons and entities:

(1) every small business that provides the required consultant services and is included on the list required by section 11810;

(2) every provider of architectural, landscape architectural, engineering, land surveying, environmental, or construction management services with whom the Commission has had a contract at any time during the past three years; and

(3) every provider of such services who has submitted a statement of qualifications and performance data within the last three years.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11860. Contents of a Statement of Qualifications and Performance Data.

A statement of qualifications and performance data shall contain the following information:

(1) the name, address, and telephone number of the person or entity;

(2) the type of service or services that the person or entity provides;

(3) if the statement concerns an entity, the name of the contact person at the person;

(4) a brief summary of all of the following: (1) the professional excellence, demonstrated competence, and specialized experience of the person or entity, (2) the education and experience of key personnel, (3) the current staff workload, (4) the ability of meet deadlines, (5) the nature and quality of completed work, and (6) the reliability and continuity of the entity; and

(5) For those persons or entities submitting a statement of qualifications and performance data for construction project management services, the person or entity shall also provide a summary of the expertise of the individual or entity and the person having on–site responsibilities in all of the following areas: (1) construction project design review and evaluation, (2) construction mobilization and supervision, (3) bid evaluation, (4) project scheduling, (5) cost–benefit analysis, (6) claims review and negotiation, and (7) general management and administration of a construction project.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11870. Discussion of Anticipated Concepts and Relative Utility of Alternative Methods of Approach.

(a) Within 15 working days of the close of the period for receiving statements of qualifications and performance data as stated in the request required by section 11850, the Executive Director shall select three consultants from those who have a complete statements of qualifications and performance data on file and shall notify those selected that the Executive Director wants to meet with the three consultants to discuss anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(b) Within 15 working days of notifying the three consultants selected pursuant to section 11870(a), the Executive Director shall meet with the representatives of those persons or entities chosen and shall discuss anticipated concepts and the relative utility of alternative methods of approach.

(c) Based on the discussions carried out pursuant to section 11870(b), the Executive Director may modify the criteria on which he or she shall base the ranking of the persons and entities who have submitted statements of qualifications and performance data.

(d) If the Executive Director modifies the criteria on which he or she will base the rankings required by section 11840, the Executive Director shall make those modifications in writing and shall include the modified criteria in the record of the consultant selection process.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11880. Evaluation of Current Statements of Qualifications and Performance Data and Statements Submitted in Response to Request.

(a) No earlier than the date indicated in the request published as required by section 11850, the Executive Director shall evaluate all the statements of qualifications and performance data on file for the discipline from which the Executive Director intends to select a consultant and shall rank each and every consultant for which a complete statement of qualifications and performance data is on file in accordance with the criteria that have been established for this consultant contract.

(b) Each such consultant shall be ranked from the highest to the lowest with a score based on the criteria established for the consultant contract.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4527(a), Government Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

§ 11890. Contract Negotiation.

(a) Within 14 days of ranking of the consultants or longer if needed and if the person or entity is notified in writing of the need for additional time, the Executive Director shall notify the highest–ranking person or entity and shall commence negotiations with that person or entity.

(b) Notice to the highest ranked person or entity shall be in writing and shall include instructions for the negotiations to follow and any other information necessary to understand fully the negotiation process.

(b) The Executive director shall negotiate with the highest ranking firm until either the Executive Director has executed a contract with that person or entity to provide all of the required services at a fair and reasonable price or the Executive Director has determined that he or she is unable to negotiate such a contract.

(c) If the Executive Director determines that he or she cannot negotiate a contract for the required services at a fair and reasonable price with the highest ranked person or entity, the Executive Director shall formally terminate negotiations with that person or entity by providing written notice of termination. The written notice of termination shall be sent by Registered Mail and by regular mail and shall state the fact that the Executive Director has determined that he or she cannot reach an agreement to provide the required services at a fair and reasonable prices and the fact that the Executive Director is therefore terminating negotiations.

(d) If the Executive Director has terminated negotiations with the highest ranked person or entity, the Executive Director shall open negotiations with the next highest ranked person or entity within 15 working days of formal notification of termination of negotiations with the highest ranked person or entity. Negotiations shall continue with the second ranked person or entity until the Executive Director either executes a contract or determines that he or she cannot negotiate such a contract at a fair and reasonable price.

(e) This process shall be continued with the third, four, fifth, etc. highest ranked person or entity until the Executive Director can reach agreement on and execute a contract to provide the required services at a fair and reasonable price.

NOTE: Authority cited: Section 66632(f), Government Code; Section 29201(e), Public Resources Code. Reference: Section 4528; and Government Code. Section 6106, Public Contracts Code.

HISTORY

1. New section filed 10–31–94; operative 11–30–94 (Register 94, No. 44).

Chapter 19. San Francisco Bay Plan

§ 11900. Bay Plan Amendments.

(a) Resolutions.

1. On September 16, 1999, the San Francisco Bay Conservation and Development Commission approved Resolution No. 99–06, adopting Bay Plan Amendment No. 2–99, revising the Waterfront Park, Beach priority use area at Oyster Point, South San Francisco.

2. On April 6, 2000, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–03, adopting Bay Plan Amendment No. 5–99, deleting some descriptive material from Part V of the Bay Plan, moving the remaining descriptive material into Part I of the Bay Plan, modifying Part I to accommodate the material moved from Part V, and moving the policy parts of Part V into Part IV of the Bay Plan.

3. On July 20, 2000, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–06, adopting Bay Plan Amendment No. 7–99, adding a new criterion for Bay fill on publicly owned land to Part IV of the Bay Plan, amending the San Francisco Waterfront Special Area Plan to allow public trust uses on Bay fill under certain circumstances in conjunction with a package of public benefits, clarifying the public access requirements for pier redevelopment projects, and rescinding the San Francisco Waterfront Total Design Plan, Piers 7 through 24.

4. On September 7, 2000, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–07, adopting Bay Plan Amendment No. 2–00, deleting the water–related industry priority use area designation from the former Pacific Refinery property in the City of Hercules.

5. On December 7, 2000, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–08, adopting Bay Plan Amendment No. 3–00, revising the findings and policies related to dredging, disposal, and beneficial reuse of dredged material set forth in the San Francisco Bay Plan. Revisions to the Findings and Policies of the Bay Plan include, but are not limited to: (1) a decrease in the disposal of dredged material in the Bay while increasing both the beneficial reuse of dredged material and the use of the federally designated ocean disposal site; (2) a limit on in–Bay disposal of dredged material for habitat enhancement projects; (3) the identification of dredged material rehandling facilities as a water related industry; (4) the deletion of language that encourages dredging additional channels in the Bay; and (5) selected amendments to Bay Plan maps.

6. On January 4, 2001, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–10, adopting Bay Plan Amendment No. 4–00, deleting from and adding to the port priority use area designations at the former Oakland Army Base and the Port of Oakland in the City of Oakland.

7. On March 15, 2001, the San Francisco Bay Conservation and Development Commission approved Resolution 01–02, adopting Bay Plan Amendment No. 5–00, revising the public access findings and policies to provide for maximum feasible public access while protecting wildlife from adverse effects.

8. On July 19, 2001, the San Francisco Bay Conservation and Development Commission approved Resolution No. 01–11, adopting Bay Plan Amendment No. 1–00, creating a new policy section entitled Navigational Safety and Oil Spill Prevention and modified certain findings and policies in the Dredging, Recreation, Transportation and Safety of Fills policy sections regarding navigational safety and oil spill prevention.

9. On April 18, 2002 the San Francisco Bay Conservation and Development Commission approved Resolution No. 02–02, adopting Bay Plan Amendment No. 1–01, updating the marshes and mudflats, fish and wildlife and dredging findings and policies; adding a new policy section on subtidal areas; amending the priority use area designations and Plan Map notes; and changing the terminology in the introductory section from "wildlife area" to "wildlife refuge."

10. On October 17, 2002, the San Francisco Bay Conservation and Development Commission approved Resolution No. 02–03, adopting Bay Plan Amendment No. 1–02, updating the Bay Plan recreation findings and policies and amending the Plan Map Notes and Plan Map Policies.

11. On October 17, 2002, the San Francisco Bay Conservation and Development Commission approved Resolution 02–04, adopting Bay Plan Amendment No. 6–02, revising the mitigation policies and adding mitigation findings.

12. On June 19, 2003, the San Francisco Bay Conservation and Development Commission approved Resolution No. 03–02, adopting Bay Plan Amendment No. 8–02, revising the water quality findings and policies. Regulatory provisions in the amendment address tidal flats; conservation and restoration of water surface area and volume to protect and improve water quality; new project siting, design, construction, and maintenance to prevent or minimize discharge of pollutants into the Bay; coordination with other agencies when considering a project in an area polluted with toxic or hazardous substances; support of other agencies in developing nonpoint source pollution control programs; siting and design of new developments so as to be consistent with stormwater permits and stormwa-

ter management guidelines and with protection of the Bay; and, use of native vegetation buffer areas as part of a project.

13. On January 20, 2005, the San Francisco Bay Conservation and Development Commission approved Resolution 05–01, adopting Bay Plan Amendment No. 2–04, adding two findings and two polices regarding the siting and use of desalination facilities to the Other Uses of the Bay and Shoreline section and deleting reference to desalination facility siting in the power plant siting policy in the Other Uses of the Bay and Shoreline section.

14. On August 18, 2005, the San Francisco Bay Conservation and Development Commission approved Resolution 05–05, adopting Bay Plan Amendment No. 3–04, splitting the salt ponds and other managed wetlands section into two separate sections, updating the salt ponds findings and policies, and amending the Plan Map notes, policies, suggestions and priority use area designations regarding salt ponds.

15. On October 20, 2005, the San Francisco Bay Conservation and Development Commission approved Resolution 05–06, adopting Bay Plan Amendment No. 1–05, updating the transportation findings and policies, and amending the Plan Map notes, policies and suggestions regarding transportation and updating the fills in accord with the Bay Plan policies.

16. On May 4, 2006, the San Francisco Bay Conservation and Development Commission adopted Resolution No. 06–01, approving Bay Plan Amendment No. 1–06 which amended San Francisco Bay Plan Maps Nos. 4 and 5 and San Francisco Bay Area Seaport Plan Figure 4 by deleting the port priority use area designation from approximately six acres of land on the east side of Interstate 880 in the City of Oakland between West Grand Avenue on the north, 17th Avenue extended to the Interstate 880 Frontage Road on the south, Wood Street on the east and the Interstate 880 Frontage Road on the west.

17. On September 7, 2006, the San Francisco Bay Conservation and Development Commission approved Resolution No. 06–07, adopting Bay Plan Amendment No. 2–06, amending the Bay Plan recreation findings and policies; amending the Bay Plan Map notes, policies and suggestions pertaining to recreation and waterfront park priority use area designations; and amending Resolution 16, fixing the boundaries of waterfront park priority use areas. The adopted amendment revised the recreation findings and policies that apply to all water–oriented recreation facilities, including waterfront parks, beaches, marinas, launch ramps, fishing piers and regional trails.

The Commission's amendment of the Bay Plan recreation policies addressed changes in demographics and the corollary change in recreation demand. The amendment also included policy changes that will affect all sites designated for park priority use, including provision for regional trail systems; beaches; non–motorized small boat access to the Bay, interim uses of waterfront parks; wildlife and habitat protection; natural and cultural resource interpretation; and ensuring that sites that are ideal for a particular recreation activity are made available for that activity.

18. On January 18, 2007, the San Francisco Bay Conservation and Development Commission adopted Resolution No. 07–07, approving Bay Plan Amendment No. 3–06, relocating 15 acres of port priority use area designation in the City of Oakland.

19. On November 1, 2007, the San Francisco Bay Conservation and Development Commission approved Resolution 07–05, adopting Bay Plan Amendment No. 1–07, updating the managed wetlands findings and policies, and amending the Plan Map managed wetland designations. The amended findings and policies include: current descriptions of the uses and distribution of managed wetlands; additional information on the values of managed wetlands, and; continued support of maintaining managed wetlands for waterfowl hunting. The amendment also includes detailed policy guidance for uses of managed wetlands no longer needed for waterfowl hunting including: restoration of managed wetlands to tidal action; retention, enhancement and management of managed wetlands for multiple species, and; development of managed wetlands.

(b) Map Changes.

1. Revise Map No. 5 by deleting approximately 37 acres from the Waterfront Park, Beach priority use area designation at Oyster Point, in the City of South San Francisco.

2. Revise Map No. 4 by deleting two references to the San Francisco Waterfront Total Design Plan, Piers 7 through 24 and one reference to recommendations in the San Francisco Waterfront Special Area Plan.

3. Revise Map No. 2 by deleting the water–related industry priority use area designation from the former Pacific Refinery property in the City of Hercules.

4. Map No. 1, Note 9 to include the use of dredged material at Skaggs Island whenever feasible and environmentally acceptable.

Delete policy map Notes "A," "D", and "E" which reference a possible new small boat channel, a new barge channel, and a new shallow draft port respectively.

Add policy map notes identifying the possible use of Bel Marin Keys Unit V and the North Point Property site as wetland restoration sites using dredged material.

Add policy map note identifying the Port Sonoma marina ponds as a regional dredged material rehandling facility.

5. Revise Map No. 2, Note 3 by deleting the priority use designation of the three northernmost ponds of the Mare Island site.

Add policy map notes identifying the possible use of the Cargill Crystallizer ponds and the Wickland Selby site as regional dredged material rehandling facilities.

Add policy map note identifying the Praxis Pacheco site as a dredged material confined disposal site.

6. Revise Map No. 3, Note 3 to include the use of dredged material from the Bay region for wetland restoration and enhancement in Collinsville. A portion of the site may also be used as a regional dredged material rehandling facility for Bay Area projects.

7. Revise Map No. 4 to include notes identifying the Port of Oakland Middle Harbor as a habitat enhancement site using dredged material, and the former NAS Alameda as a possible site for dredged material reuse.

8. Revise Map No. 5 to include notes identifying the Port of Oakland Middle Harbor as a habitat enhancement site using dredged material, and the former NAS Alameda as a possible site for dredged material reuse.

9. Delete Map No. 6, Note C to exclude the possible small boat channel just south of Bay Slough in Redwood City.

10. Delete Map No. 7, Note F to exclude the possible shallow draft port at Guadaloupe Slough, Mountain View.

11. Revise Map No. 4 and Map No. 5 by deleting approximately 174.4 acres of port priority use designation from the former Oakland Army Base; deleting reference to the Oakland Army Base; and deleting Map No. 4 Policy 17 and Map No. 5 Policy 2.

12. Revise Maps No. 4 and Map No. 5 by adding port priority use area designation to a 10–acre parcel east of Interstate Highway 880 between 16th Street, West Grand Avenue and Wood Street; an 11 acre parcel within the Interstate 880 right–of–way adjacent to the 10–acre parcel; and a 30–acre parcel adjacent to and west of Interstate Highway 880 at Seventh Street.

13. Revise Maps No. 1 through 7 by: (1) updating the wildlife priority use area designations to include state and federal wildlife refuges; (2) deleting the park priority use area designation and adding a wildlife priority use area designation to Map No. 6 at Bair Island in the Don Edwards San Francisco Bay National Wildlife Refuge; (3) deleting Map No. 8; and (4) amending notes identifying wildlife refuges and other areas of significance to fish, other aquatic organisms and wildlife.

14. Revise Map Nos. 4 and 5 by updating Map Notes and Map Policies pertaining to existing and former Bayfront military installations designated for waterfront park priority use; adding vista points; and correcting geographic place names.

15. Revise Maps No. 1, 2, 6 and 7 by: (1) updating Map Notes, Policies and Suggestions pertaining to salt ponds; (2) updating the wildlife priority use area designations on Plan Map 2 to include former salt ponds add-

ed to Fagan Marsh Ecological Reserve; (3) deleting a portion of the Menlo Park park priority use area designation on Plan Maps 6 and 7 and designating that portion as a wildlife priority use area and as a salt pond, managed wetland; (4) deleting two portions of the Coyote Hills park priority use area designation on Plan Map 7 and designating those portions as wildlife priority use areas and salt ponds, managed wetlands; and (5) correcting one designation on Plan Map 6 and three designations on Plan Map 7 to salt pond, managed wetland.

16. Revise Map No. 4 by moving Commission Suggestion B from an area north of the Richmond–San Rafael Bridge to an area south of the Richmond–San Rafael Bridge and revise Maps No. 1, 2, 4, 5, 6 and 7 updating Map Notes, Policies and Suggestions pertaining to transportation.

17. Revise Maps Nos. 4 and 5 by deleting the port priority use area designation from a six–acre parcel in Oakland east of Interstate 880 bounded on the north by West Grand Avenue, on the east by Wood Street, on the south by 17th Avenue extended to the Interstate 880 Frontage Road, and on the west by the Interstate 880 Frontage Road.

18. Revise Map Nos. 1 through 7 by updating Map notes, policies and suggestions pertaining to recreation and revising waterfront park priority use area designations. The amendment added or revised 36 waterfront park priority use areas, including converting a portion of a water–related industry priority use area in Vallejo to waterfront park priority use and deleting another portion of this water–related industry priority use area.

19. Revise Maps Nos. 4 and 5 by relocating 15 acres of port priority use area designation in Oakland from a parcel bounded by Engineer Road to the north, and West Grand and Wake Avenues to the south to a parcel bounded by existing Oakland port priority use area to the south, and to the north by Maritime Street and a line extending perpendicularly from Maritime Street to the point where West 21st Street intersects the existing priority use area.

20. Revise Maps Nos. 1 and 2 by correcting the designation of one parcel in the North Bay from tidal marsh to managed wetland.

NOTE: Authority cited: Sections 66602, 66611, 66632(f), 66651 and 66652, Government Code. Reference: Section 66652, Government Code; and San Francisco Bay Plan, Parts I and IV.

HISTORY

1. New chapter 19 (section 11900) and section filed 11–12–99; operative 11–12–99 pursuant to Government Code section 11354.1 (Register 99, No. 46).
2. New subsection (a)2. and new NOTE filed 7–11–2000; operative 7–11–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 28).
3. Editorial correction relettering second subsection (a) to subsection (b) (Register 2000, No. 44).
4. New subsections (a)3. and (b)2. and amendment of NOTE filed 10–30–2000; operative 11–29–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 44).
5. New subsections (a)4. and (b)3. filed 10–30–2000; operative 10–30–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 44).
6. New subsections (a)5. and (b)4.–10. summarizing regulatory provisions adopted by Bay Plan Amendment No. 3–00 filed 1–2–2001; regulatory provisions are approved by OAL and operative 1–2–2001 pursuant to Government Code section 11354.1 (Register 2001, No. 1).
7. New subsections (a)6. and (b)11.–12. summarizing regulatory provisions adopted by Bay Area Plan Amendment No. 4–00 and amendment of NOTE filed 3–20–2001; regulatory provisions are approved by OAL and operative 3–20–2001 pursuant to Government Code section 11354.1 (Register 2001, No. 12).
8. New subsection (a)7. summarizing regulatory provisions adopted by Bay Plan Amendment No. 5–00 filed 5–14–2001; regulatory provisions are approved by OAL and operative 5–14–2001 pursuant to Government Code section 11354.1 (Register 2001, No. 20).
9. New subsection (a)8. summarizing regulatory provisions adopted by Bay Plan Amendment No. 1–00 and amendment of NOTE filed 10–3–2001; regulatory provisions are approved by OAL and operative 10–3–2001 pursuant to Government Code section 11354.1 (Register 2001, No. 40).
10. New subsections (a)9. and (b)13. summarizing regulatory provisions adopted by Bay Plan Amendment No. 1–01 filed 6–18–2002; regulatory provisions are approved by OAL and operative 6–18–2002 pursuant to Government Code section 11354.1 (Register 2002, No. 25).
11. New subsections (a)10. and (b)14. summarizing regulatory provisions adopted by Bay Plan Amendment No. 1–02 filed 12–19–2002; regulatory provisions are approved by OAL and operative 12–19–2002 pursuant to Government Code section 11354.1 (Register 2002, No. 51).
12. New subsection (a)11. summarizing regulatory provisions adopted by Bay Plan Amendment No. 6–02 filed 12–19–2002; regulatory provisions are approved by OAL and operative 12–19–2002 pursuant to Government Code section 11354.1 (Register 2002, No. 51).
13. New subsection (a)12. summarizing regulatory provisions adopted by Bay Plan Amendment No. 03–02 filed 8–14–2003; regulatory provisions are approved by OAL and operative 8–14–2003 pursuant to Government Code section 11354.1 (Register 2003, No. 33).
14. New subsection (a)13. summarizing regulatory provisions adopted by Bay Plan amendment No. 2–04 filed 4–4–2005; regulatory provisions are approved by OAL and operative 4–4–2005 pursuant to Government Code section 11354.1 (Register 2005, No. 14).
15. New subsections (a)14. and (b)15. filed 10–25–2005; operative 10–25–2005 pursuant to Government Code section 11354.1 (Register 2005, No. 43).
16. New subsections (a)15. and (b)16. summarizing regulatory provisions adopted by Bay Plan amendment No. 1–05 filed 12–22–2005; operative 1–21–2006 pursuant to Government Code section 11354.1 (Register 2005, No. 51).
17. New subsections (a)16. and (b)17. summarizing regulatory provisions adopted by Bay Plan Amendment No. 1–06 filed 6–30–2006; regulatory provisions are approved by OAL and operative 6–30–2006 pursuant to Government Code section 11354.1 (Register 2006, No. 26).
18. New subsections (a)17 and (b)18 summarizing regulatory provisions adopted by Bay Plan Amendment No. 2–06 filed 11–7–2006; regulatory provisions are approved by OAL and operative 11–7–2006 pursuant to Government Code section 11354.1 (Register 2006, No. 45).
19. Change without regulatory effect amending subsection (a)5. filed 3–1–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 9).
20. New subsections (a)18. and (b)19. summarizing provisions adopted by Bay Plan Amendment No. 3–06 filed 3–27–2007; regulatory provisions are approved by OAL and operative 3–27–2007 pursuant to Government Code section 11345.1 (Register 2007, No. 13).
21. New subsections (a)19. and (b)20. summarizing provisions adopted by Bay Plan Amendment No. 1–07 filed 1–4–2008; operative 1–4–2008 pursuant to Government Code section 11354.1 (Register 2008, No. 1).

Chapter 20. San Francisco Bay Area Seaport Plan

§ 11945. Seaport Plan Amendments.

(a) Resolutions.

1. On April 18, 1996, the San Francisco Bay Conservation and Development Commission approved Resolution No. 96–06, adopting Bay Plan Amendment No. 2–95, modifying the *San Francisco Bay Plan* and *San Francisco Bay Area Seaport Plan* policies for marine terminal development and boundaries for port priority use areas.

2. On September 18, 1997, the San Francisco Bay Conservation and Development Commission approved Resolution No. 97–09, adopting Bay Plan Amendment No. 1–97, modifying the *San Francisco Bay Area Seaport Plan* to remove the port priority use designation from a 220–acre parcel along the Oakland Inner Harbor at the former Alameda Naval Air Station.

3. On March 2, 2000, the San Francisco Bay Conservation and Development Commission approved Resolutions No. 00–01 and No. 00–02, adopting Bay Plan Amendments 1–99 and 3–99, respectively, modifying the *San Francisco Bay Plan* and *the San Francisco Bay Area Seaport Plan* to remove the port priority use designation from Encinal Terminals in the City of Alameda.

4. On January 4, 2001, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–10, adopting Bay Plan Amendment No. 4–00, deleting from and adding to the port priority use area designations at the former Oakland Army Base and the Port of Oakland in the City of Oakland.

5. On February 20, 2003, the San Francisco Bay Conservation and Development Commission approved Resolution No. 03–01, adopting Bay Plan Amendment Nos. 2–02 through 5–02 and 7–02, revising San Francisco Bay Area Seaport Plan findings and policies and designations at the Benicia, Oakland, Redwood City, Richmond, San Francisco and Collinsville port priority use areas.

6. On May 4, 2006, the San Francisco Bay Conservation and Development Commission adopted Resolution No. 06–01, approving Bay Plan

Amendment No. 1–06, revising the Port of Oakland port authority use area designation in San Francisco Bay Area Seaport Plan Figure 4 and the Oakland Priority Use Boundaries description.

7. On January 18, 2007, the San Francisco Bay Conservation and Development Commission adopted Resolution No. 07–07, approving Bay Plan Amendment No. 3–06, revising the Port of Oakland port priority use area designation in the San Francisco Bay Area Seaport Plan Figure 4 and the Oakland Priority Use Boundaries description.

(b) Policy Changes.

1. Modify cargo throughput capability analysis to reflect higher potential cargo throughput at existing and future marine terminals.

2. Eliminate the distinction between "long–term" and "near–term" marine terminals and instead use a single designation of "future" marine terminal sites.

3. Prohibit further deletion of sites from port priority use and marine terminal designations until a cargo monitoring process is implemented.

4. Modify requirements for updating the Seaport Plan.

5. Allow interim uses on areas designated for port or marine terminal use to exceed five years. Non–port priority interim uses can be allowed provided they do not impede the eventual use of the area for port uses or marine terminal development. Factors such as the amortization period necessary for investments in interim uses and the expected need for marine terminal development of the port area should be considered in the review of interim uses.

6. Modify container cargo throughput capacity at the Port of Oakland to reflect higher cargo throughput per marine terminal and berth because of operational efficiencies gained by the reconfiguration of the Port's marine terminals and Joint Intermodal terminal.

7. Allow bulk cargo handling in container terminals until needed exclusively for handling container cargo, provided the non–container cargo use would not impair the current or future use of the terminal for container shipping.

8. Allow passenger ferry terminals and ancillary uses in port priority use areas, but not in marine terminals, provided that the development and operations of the ferry facilities do not interfere with ongoing or future port–related uses, and navigational and passenger safety can be assured.

(c) Port Priority Use Designation Changes.

1. *Port of Benicia*: Remove long–term marine terminal designation.

2. *Port of Oakland:* Remove port priority use designation from a triangular parcel northeast of Interstate 880; remove near–term terminal and port priority use designation from the Ship Repair area; and change the "long–term" marine terminal designation at Bay Bridge site to "two–berth future marine terminal" designation.

3. *Port of Redwood City*: Remove port priority use designation from 106–acre area east of Seaport Boulevard.

4. *Port of Richmond:* Remove port priority use designation from the ancillary use zone.

5. *Port of San Francisco:* Remove all near–term marine terminal designations except for one at Pier 94 North, and change that remaining designation to a "future" marine terminal. Remove portions of port priority use area from existing terminals at Piers 48 and 50; remove port priority use area from Piers 52–64; remove portions of the port priority use area from Pier 70; remove port priority use area inland of and between Piers 70–80; remove portions of port priority use area from Pier 80 and Piers 94–96; and remove port priority use designation from Pier 98.

6. *Mare Island Naval Shipyard:* Remove port priority use designation from entire base. Retain the Mare Island dredged material disposal ponds, which are located in historic baylands, in water–related industry priority use for dredged material disposal and rehandling. The three northernmost ponds could be used to provide wetland habitat for the salt marsh harvest mouse in order to mitigate any potential adverse impacts resulting from the future use of the other seven ponds for dredged material disposal and rehandling.

7. *FISCO Alameda Annex:* Remove port priority use designation.

8. *Fleet and Industrial Supply Center Oakland (FISCO)*: Retain port priority use designation and add 5–berth future marine terminal designation.

9. *Hunters Point Naval Shipyard:* Remove all but 55–acre port priority use designation on the southeast portion of the Shipyard.

10. *Selby Site:* Remove the port priority use designation from the Unocal property. Retain a 60–acre port priority use area and 5–berth marine terminal designation on the Wickland Oil property.

11. *Vallejo Site:* Remove the port priority use and near–term marine terminal designations from the waterfront.

12. *Martinez (Pacheco Creek Sites):* Remove port priority use designation from all areas.

13. *Alameda Gateway Site (Former Todd Shipyard):* Remove port priority use designation.

14. *Port of Oakland:* Remove port priority use area designation from 174.4 acres of land in the northern part of the former Oakland Army Base. Add port priority use area designation to an approximately 10–acre parcel east of Interstate Highway 880 between 16th Street, West Grand Avenue and Wood Street. Add port priority use area designation to an 11–acre parcel within the Interstate 880 right–of–way under the elevated portion of Interstate Highway 880 adjacent to the 10–acre parcel. Add port priority use area designation to a 30–acre parcel west of Interstate Highway 880 at Seventh Street. Revise the north and east boundaries of the Northern Area of the Oakland Priority Use Area consistent with the changes to the port priority use area designation.

15. *Port of Benicia:* Remove port priority use designation from 48 acres of Port property, from 30 acres owned by the City of Benicia, and from approximately 80 acres of privately owned property.

16. *Port of Oakland:* Remove port priority use and two–berth marine terminal designations from Ninth Avenue Terminal.

17. *Port of Richmond:* Remove port priority use and one–berth marine terminal designations from Terminal 4.

18. *Port of San Francisco:* Remove port priority use designation from all but approximately 16 acres and remove two–berth marine terminal designation in its entirely from Pier 70.

19. *Redwood City:* Remove port priority use and one–berth marine terminal designations from former Cargill salt terminal.

20. *Collinsville:* Remove port priority use designation.

21. *Port of Oakland:* Delete six acres of port authority use area designation from a parcel bounded on the north by West Grand Avenue, on the east by Wood Street, on the south by 17th Avenue extended to the Interstate 880 Frontage Road, and on the west by the Interstate 880 Frontage Road.

22. *Port of Oakland:* Relocate 15 acres of port priority use area designation from a parcel bounded by Engineer Road to the north, and West Grand and Wake Avenues to the south to a parcel bounded by existing Oakland port priority use area to the south, and to the north by Maritime Street and a line extending perpendicularly from Maritime Street to the point where West 21st Street intersects the existing priority use area.

NOTE: Authority cited: Sections 66602, 66611, 66632(f), 66651 and 66652, Government Code. Reference: Section 66652, Government Code; San Francisco Bay Plan Part IV; and San Francisco Bay Area Seaport Plan, Parts I, II, and III.

HISTORY

1. New Chapter 20 (section 11945) and section 11945 filed 7–16–96; operative 7–16–96 pursuant to Government Code section 11354.1 (Register 96, No. 29).
2. Amendment of section heading and section filed 11–24–97; operative 11–24–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 48).
3. New subsection (a)3., repealer of subsection (c)2. and subsection renumbering filed 5–3–2000 pursuant to Government Code section 11354.1; operative 5–3–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 18).
4. New subsections (a)4., (b)6. and (c)14. summarizing regulatory provisions adopted by Bay Area Plan Amendment No. 4–00 and amendment of NOTE filed 3–20–2001; regulatory provisions are approved by OAL and operative 3–20–2001 pursuant to Government Code section 11354.1 (Register 2001, No. 12).

5. New subsections (a)5., (b)7.–8. and (c)15.–20. filed 4–17–2003; operative 4–17–2003 pursuant to Government Code section 11354.1 (Register 2003, No. 16).
6. New subsections (a)6. and (c)21. summarizing regulatory provisions adopted by Bay Plan Amendment No. 1–06 filed 3–20–2007; regulatory provisions are approved by OAL and operative 3–20–2007 pursuant to Government Code section 11354.1 (Register 2007, No. 12).
7. New subsections (a)7. and (c)22. summarizing regulatory provisions adopted by Bay Plan Amendment No. 3–06 filed 3–27–2007; regulatory provisions are approved by OAL and operative 3–27–2007 pursuant to Government Code section 11345.1 (Register 2007, No. 13).

Chapter 21. Special Area Plans

§ 11960. 1996 San Francisco Waterfront Special Area Plan Amendment.

(a) On March 21, 1996, the San Francisco Bay Conservation and Development Commission approved Resolution 96–02, adopting Bay Plan Amendment No. 3–95, modifying the *San Francisco Waterfront Special Area Plan* to permit certain uses on new or replacement fill at Pier 52 in San Francisco, by making the following changes to the Special Area Plan:

(1) Add "commercial recreation" to the uses allowed at Pier 52 on new or replacement fill in the Geographic–Specific Policies and Recommendations section and add a plan note to Special Area Plan Maps 4 and 5 adding "commercial recreation" to the list of uses now authorized at Pier 52 on new or replacement fill.

(2) Make minor corrective changes to Special Area Plan Maps 4 and 5 by adding the pier numbers to Piers 52 and 54 and changing the name of the street in front of Pier 52 from "China Basin Street" to "Terry A. Francois Boulevard."

(b) On July 20, 2000, the San Francisco Bay Conservation and Development Commission approved Resolution No. 00–06, adopting Bay Plan Amendment No. 7–99, modifying the *San Francisco Waterfront Special Area Plan* as follows:

(1) Delete the "Introduction" to the Special Area Plan and provide a new, more current introduction.

(2) Re–define the boundaries of the Geographic Vicinities that define the locations where fill removal can offset fill placement for projects approved pursuant to the Replacement Fill policies in Part IV of the *San Francisco Bay Plan*.

(3) Delete the recommendations in all sections of the Special Area Plan.

(4) Add a policy to the Fisherman's Wharf Geographic Specific Policies calling for a community planning process to reevaluate the Special Area Plan policies governing the area between the Hyde Street Pier and East Wharf Park in San Francisco.

(5) Delete the partial quotations from the McAteer–Petris Act and *San Francisco Bay Plan* in the Special Area Plan.

(6) Modify Special Area Plan Maps 1 through 9 to reflect the above changes, and to incorporate past Special Area Plan amendments adopted by the Commission, but not reflected in the maps.

(7) Add "Appendix I" to the plan providing a brief history of the development of the Special Area Plan and amendments to it.

(8) Make necessary changes to the existing Special Area Plan General Policies to indicate when these do not apply within the area between Pier 35 and China Basin in San Francisco.

(9) Replace the Geographic Specific policies that apply to the Northeastern Waterfront (the area between Pier 35 and China Basin) with new Geographic Specific policies that apply to the Northeastern Waterfront as follows:

a. Permit uses consistent with the Public Trust Doctrine and the Port of San Francisco's legislative trust grant on repaired or wholly reconstructed piers not identified for removal in the area between Pier 35 and China Basin in San Francisco.

b. Require the provision of substantial public benefits, including the removal of Piers 24, 34 and 36, the Pier 15–17 "valley" and non–historic shed additions, and the partial removal of Piers 1/2, 2, and the shed at Pier 23; and the planning, design and construction of two major plazas: the Northeast Wharf Plaza and the Brannan Street Wharf Plaza.

c. Specify four Open Water Basins and other Open Water Areas, and permit a limited range of uses and types of fill within Open Water Basins and Open Water Areas.

d. Better define maximum feasible public access for major pier redevelopment projects and for small projects in the area between Pier 35 and China Basin in San Francisco.

e. Add policy sections addressing historic preservation, waterfront design, views and transportation and parking for the area between Pier 35 and China Basin in San Francisco.

f. Add Implementation Requirements to the Special Area Plan for the public benefits described in (2) above.

(10) Rescind the *San Francisco Waterfront Total Design Plan Piers 7 through 24*.

NOTE: Authority cited: Sections 66632(f), 66651 and 66652, Government Code. Reference: Sections 66601, 66602 and 66605, Government Code.

HISTORY

1. New chapter 21 (section 11960) and section filed 7–30–96; operative 7–30–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 31).
2. Amendment filed 10–30–2000; operative 11–29–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 44).

§ 11961. Approval of White Slough Specific Area Plan.

On December 15, 1999, the San Francisco Bay Conservation and Development Commission approved the *White Slough Specific Area Plan*, pursuant to the White Slough Protection and Development Act. The Plan provides for the following in the White Slough area of Vallejo and western Solano County:

(a) permanent protection and enhancement of at least 336 acres of tidal wetlands within White Slough and 132 acres of tidally influenced areas in South White Slough;

(b) the minimum amount of fill, not to exceed 13 acres, necessary to widen State Highway Route 37 to a four–lane highway and to construct interchanges between State Highway Route 37 and State Highway Route 29 and Sacramento Street;

(c) flood protection for upland areas;

(d) suitable water quality; and

(e) wetland enhancement for all tidally influenced areas of South White Slough, including a program for the acquisition, enhancement and permanent preservation of those areas.

NOTE: Authority cited: Sections 66632(f), 66651 and 66652, Government Code. Reference: Sections 66670–66682, Government Code.

HISTORY

1. New section filed 3–7–2000; operative 3–7–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 10).

Chapter 23. Suisun Marsh Protection Plan

§ 11970. Marsh Plan Amendments.

(a) Resolutions

1. On November 1, 2007, the San Francisco Bay Conservation and Development Commission approved Resolution 07–05, adopting Marsh Plan Amendment No. 1–07, updating findings and policies regarding managed wetlands. The amendment includes revisions to the following sections of the Marsh Plan: Environment; Water Supply and Quality; Utilities, Facilities and Transportation; Recreation and Access, and; Land Use and Marsh Management. The amended findings and policies include: current information on the values of managed wetlands; detailed descriptions of the historical and current use of managed wetlands, including current management objectives and challenges; continued support for maintaining managed wetlands for waterfowl hunting, and; detailed policy guidance for the restoration of managed wetlands to tidal action or the retention, enhancement and management of managed wetlands for multiple species.

NOTE: Authority cited: Section 29201, Public Resources Code. Reference: Section 66602.1, Government Code; and Suisun Marsh Protection Plan, Parts II and III.

History

1. Renumbering of former chapter 23 to chapter 24 and new chapter 23 (section 11970) and section filed 1–4–2008; operative 1–4–2008 pursuant to Government Code section 11354.1 (Register 2008, No. 1).

Chapter 24. Suisun Marsh Local Protection Plan

§ 11990. Certification of Amendment to Solano County Local Protection Program.

On June 17, 1999, the San Francisco Bay Conservation and Development Commission approved Resolution No. 99–02, certifying amendments to Solano County's Local Protection Program component to:

(a) allow wetland restoration and enhancement of diked former tidal marsh within the Collinsville water–related industry reserve area;

(b) assure that any restoration or enhancement project be planned and carried out in a manner that would not preclude development of a marine terminal on the deep water frontage needed for water–related industry or port development; and

(c) not preclude development of a transportation connection between the shoreline and the upland area for water–related uses.

NOTE: Authority cited: Sections 29200 and 29201, Public Resources Code. Reference: Sections 29415, 29418 and 29410–29424, Public Resources Code.

History

1. New chapter 23 (section 11990) and section filed 3–29–2000; operative 3–29–2000 pursuant to Government Code section 11354.1 (Register 2000, No. 13).
2. Renumbering of former chapter 23 to chapter 24 filed 1–4–2008; operative 1–4–2008 pursuant to Government Code section 11354.1 (Register 2008, No. 1).

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Division 5.2. Colorado River Board of California

Chapter 1. Guidelines for the Evaluation of Projects Under the California Environmental Quality Act of 1970

§ 12000. General.

These Guidelines have been developed by the Colorado River Board of California in accordance with the California Environmental Quality Act of 1970 (CEQA), Public Resources Code Sections 21000–21174 as amended by Chapter 1154 of the Statutes of 1972 (AB 889). Section 21082 requires all public agencies to adopt objectives, criteria, and procedures for the evaluation of projects and preparation of environmental impact reports consistent with guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. On February 3, 1973, the Secretary of the Resources Agency adopted guidelines as part of the California Administrative Code, Title 14, Division 6, Chapter 3, entitled "Guidelines for Implementation of the California Environmental Quality Act of 1970." Additional information may be obtained by writing:

CHIEF ENGINEER
COLORADO RIVER BOARD OF CALIFORNIA
302 CALIFORNIA STATE BUILDING
217 WEST FIRST STREET
LOS ANGELES, CALIFORNIA 90012

NOTE: Authority cited: Section 12517, Water Code. Reference: Sections 21082 and 21083, Resources Code.

HISTORY

1. New Division 5.2 (Chapter 1, §§ 12000–12006) filed 4–4–73 as an emergency; effective upon filing (Register 73, No. 14).
2. Certificate of Compliance filed 6–22–73 (Register 73, No. 25).

§ 12001. Purpose.

The purpose of these Guidelines is to provide objectives, criteria, and procedures for the Colorado River Board to review, evaluate, and comment on Environmental Impact Reports (EIR's) and Federal Environmental Impact Statements (EIS's) on projects which would have a significant effect on the environment—as specified by the California Environmental Quality Act of 1970 (CEQA), amended by Chapter 1154, Statutes of 1972.

§ 12002. Policy.

As outlined in Sections 21000 and 21001 of the CEQA, every public agency and every citizen of the State has an obligation to take all action necessary to protect, rehabilitate and enhance the environment of the State. State Environmental Impact Reports (EIR's) prepared in accordance with CEQA and Federal Environmental Impact Statements (EIS's) prepared pursuant to the National Environmental Policy Act (NEPA) will inform decision–makers of the environmental effects of proposed projects. The function of reviewing EIR's and EIS's requires evaluation of projects to determine whether they might have a significant effect on the environment, examine methods of reducing adverse impacts, and consider alternatives to the project as proposed.

§ 12003. Definitions.

(a) General.

Whenever the following words or terms are used in these Guidelines, they shall have the meaning ascribed to them in this section. Nothing herein is intended to replace or negate the definitions used in CEQA or in the Guidelines adopted by the Secretary of the Resources Agency.

(b) CEQA—California Environmental Quality Act. Sections 21000 through 21174 of the California Public Resources Code.

(c) EIR—Environmental Impact Report. A detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in CEQA.

(d) EIS—Environmental Impact Statement. A report prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The Federal Government uses the term EIS in place of the term EIR, which is used in CEQA.

(e) Resources Agency Guidelines. The Guidelines adopted on February 3, 1973, by the Secretary of the Resources Agency pursuant to Section 21083 of CEQA. These Guidelines are now a part of the California Administrative Code, Title 14, Division 6, Chapter 3, entitled, "Guidelines for Implementation of the California Environmental Quality Act of 1970."

§ 12004. How the CEQA Applies to Activities of the Colorado River Board.

The purpose of CEQA and the Resources Agency Guidelines is to provide public agencies with guidelines for evaluation of projects and preparation of EIR's on projects over which any public agency has discretionary authority. Since the Colorado River Board does not propose projects on its own, provide financial support for projects, or issue leases, permits, licenses, or certificates for projects, there would not be any occasion for preparation of an EIR. However, the Colorado River Board does evaluate projects in the sense that it reviews and comments on proposed Federal projects in the State and on EIS's prepared pursuant to NEPA as well as on EIR's prepared on State and local projects pursuant to CEQA. In the review of both EIR's and Federal EIS's, the Board will follow Sections 21100 and 21101 of CEQA and Sections 15063 and 15143 of the Resources Agency Guidelines.

§ 12005. Evaluating Projects.

The Colorado River Board's major involvement with CEQA arises from its statutory responsibility to protect California's rights and interests in the Colorado River, including water quantity, water quality, and power. In fulfilling this responsibility, the Board is concerned with and comments on salinity aspects of the Colorado River, water rights, water salvage, river and reservoir operation, hydro–electric power production, channelization, underground return flows, augmentation of the Colorado River, and regional water planning.

Both Section 21101 of CEQA and Section 15063 of the Resources Agency Guidelines require state officials responsible for preparing official comments on proposed Federal projects in the state which may have a significant effect on the environment to include in their comments a discussion of certain matters. These matters will also be considered when evaluating EIR's on non–Federal projects. They are:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact.

(d) Alternatives to the proposed action.

(e) The relationship between local short–term uses of man's environment and the maintenance and enhancement of long–term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

(g) The growth–inducing impact of the proposed action.

In commenting on proposed projects within the scope of the Colorado River Board's authority, the Board will, to the extent of its competence, discuss each of the above subjects.

§ 12006. Participation.

Normally, the Colorado River Board obtains copies of EIR's and EIS's through the California State Clearing House. The areas of environmental concern, special qualification, or statutory authority for which the Board has been designated to receive reports for review are listed in Appendix B of the Resources Agency Guidelines. In addition, copies of planning reports on proposed projects are obtained from federal, state, and local agencies. Board representatives also attend public hearings and partici-

pate in meetings when necessary for the purpose of obtaining information or exchanging views with other agencies or persons.

After review and analysis of all available information on a proposed project, the Board submits comments to the Resources Agency, which in turn prepares the official comments for the State of California. In cases where the Colorado River Board's findings and comments on various issues may differ from those of other State agencies, conferences will be held to settle the differences.

The contact person for consultation on EIR's is the Chief Engineer, Colorado River Board of California, 302 California State Building, 217 West First Street, Los Angeles, California 90012. The telephone number is (213) 620–4480.

Chapter 2. Colorado River Board of California—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409 (a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

COLORADO RIVER BOARD OF CALIFORNIA
107 SOUTH BROADWAY, ROOM 8103
LOS ANGELES, CA 90012

FAIR POLITICAL PRACTICES COMMISSION
1100 K STREET
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 2, Division 5.2 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 2. Colorado River Board of California—Conflict of Interest Code

Section
12010. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. Repealer of chapter 2 (sections 12010–12018) and new chapter 2 (sections 12010–12016, Appendices A and B) filed 6–1–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 10–4–77 (Register 78, No. 22).
2. Repealer of chapter 2 (sections 12010–12016 and Appendices A and B) and new chapter 2 (section 12010 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment filed 12–19–91; operative 1–20–92. Approved by Fair Political Practices Commission 10–22–91 (Register 92, No. 11).
4. Editorial correction of HISTORY 3 (Register 95, No. 41).
5. Amendment of general provisions and appendix filed 9–5–2003; operative 10–5–2003. Approved by Fair Political Practices Commission 6–19–2003 (Register 2003, No. 36).

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Division 5.3. California Tahoe Conservancy

Article 1. Definitions

§ 12052. Executive Officer.

"Executive Officer" means the executive officer of the California Tahoe Conservancy.

NOTE: Authority cited: Section 66906.4, Government Code. Reference: Section 66906.6, Government Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37). For history of former Division 5.3, see Register 81, No. 12.

Article 2. Conservancy Meetings

§ 12060. Method of Notification.

Notice of regular meetings of the Conservancy shall be by first class mail or other reasonable means, issued not later than 10 days preceding the meeting.

NOTE: Authority cited: Section 66906.4, Government Code. Reference: Sections 11125 and 66906.4, Government Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12063. Consent Calendar.

Expedited action, through a consolidated vote on a consent calendar, may be taken on any proposed acquisition of property or other matter, where the staff of the Conservancy and prospective seller of the property, if any, are in agreement, and where the Conservancy has received no comments from a member of the Governing body, a member of the public, or any other source which would indicate that there is opposition to or controversy over the matter. Any matter shall be removed from the consent calendar for individual consideration at the request of a member of the governing body or a member of the public.

NOTE: Authority cited: Section 66906.4, Government Code. Reference: Sections 11125 and 66906.4, Government Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

Article 3. Legal Actions

§ 12080. Service on the Agency.

The Executive Officer is hereby designated the clerk and secretary of the Conservancy for purposes of Section 416.50(a) of the Code of Civil Procedure or any successor statute.

NOTE: Authority cited: Section 66906.4, Government Code. Reference: Section 416.50(a), Code of Civil Procedure.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

Article 4. Implementation of California Environmental Quality Act

§ 12100. Purpose and Authority.

These regulations are adopted by the California Tahoe Conservancy pursuant to Public Resources Code Section 21082 to implement, interpret, and make specific those provisions of the California Environmental Quality Act (Div. 13, Pub., Res. Code, commencing with Section 21000, hereinafter cited as "CEQA").

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Sections 21001(f) and 21082, Public Resources Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12101. Incorporation of State CEQA Guidelines.

(a) In accordance with Section 15022 of Title 14 of the California Administrative Code, the State CEQA Guidelines commencing with Section 15000 of Title 14 of the California Administrative Code are hereby incorporated by reference as if fully set forth in this article. All objectives, criteria, and specific procedures set forth in CEQA and the State CEQA Guidelines including the orderly evaluation of projects and the preparation of environmental documents are hereby adopted.

(b) The words used in this article have the same meaning given them in the State CEQA Guidelines, unless the context clearly requires a different meaning.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Sections 21001(f) and 21082, Public Resources Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12102. Categorically Exempt Activities.

In accordance with Sections 15300–15329 of Title 14 of the California Administrative Code, the following list of categorically exempt activities of the Conservancy has been compiled. This list is subject to the limitations on categorical exemptions set forth in the State CEQA Guidelines. This list does not preclude categorical exemptions of other activities that come within the State CEQA Guidelines.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082 Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12102.1. Class 1, Existing Facilities.

In accordance with Section 15301 of Title 14 of the California Administrative Code, Class 1 consists of the operation, repair, maintenance, or minor alteration of lots, topographical features, vegetation or existing facilities involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Existing natural conditions including trees and other vegetation;

(b) Wildlife habitat areas, streamflows, springs and waterholes, and stream channels (i.e., clearing of debris) to protect fish and wildlife resources;

(c) Erosion control facilities;

(d) Existing public recreational facilities, access roads and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities except where the activity will involve removal of a scenic resource including a stand of trees or a rock outcropping.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082 Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12102.2. Class 2, Replacement or Reconstruction.

In accordance with Section 15302 of Title 14 of the California Administrative Code, Class 2 consists of replacement or reconstruction of existing wildlife habitat, erosion control facilities, public access and recreational facilities, where the replacement or reconstruction will be on the same site with substantially the same purpose involving negligible or no expansion of capacity.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082 Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9–8–87; operative 10–8–87 (Register 87, No. 37).

§ 12102.3. Class 3, New Construction.

In accordance with Section 15303 of Title 14 of the California Administrative Code, Class 3 consists of construction of small structures or facilities serving public recreational, wildlife habitat; runoff or erosion control purposes; installation of small new equipment and facilities; and utility extensions to serve these structures or facilities including but not limited to:

(a) Interpretive centers, public restrooms or self-contained toilets, recreation tables, trash receptacles, signing and fencing;

(b) Retaining walls, gabions, curbs and gutters or swales for erosion control and streamflow maintenance;

(c) Infiltration trenches and ponds or sediment basins for runoff control;

(d) Water impoundments to provide food and cover for wildlife and wildlife habitats;

(e) Small roads and parking facilities.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.4. Class 4, Minor Alterations to Land.

In accordance with Section 15304 of Title 14 of the California Administrative Code, Class 4 consists of minor public alterations of land, water, and/or vegetation which do not involve removal of mature, scenic trees except for forestry purposes. Examples include but are not limited to:

(a) Revegetation with native plant species;

(b) Creation of bicycle or hiking trails on existing rights-of-way;

(c) Filling previously excavated land with material compatible with the natural features of the site.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.5. Class 5, Minor Alterations in Land Use Limitations.

In accordance with Section 15305 of Title 14 of the California Administrative Code, Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments not resulting in the creation of any new parcel;

(b) Reversion to acreage in accordance with the Subdivision Map Act.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.6. Class 6, Information Collection.

In accordance with Section 15306 of Title 14 of the California Administrative Code, Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities related to acquisition or management of land, which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.9. Class 9, Inspections.

In accordance with Section 15309 of Title 14 of the California Administrative Code, Class 9 consists of inspection activities including but not limited to identifying hazardous conditions, encroachments, clearing of debris and other problems or needs relating to land management.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.13. Class 13, Acquisition of Lands for Wildlife Conservation Purposes.

In accordance with Section 15313 of Title 14 of the California Administrative Code, Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.16. Class 16, Transfer of Ownership of Land in Order to Create Recreational Areas.

In accordance with Section 15316 of Title 14 of the California Administrative Code, Class 16 consists of the acquisition or transfer of land in order to establish recreational areas where the land is in a natural condition or contains historic sites or archaeological sites and either:

(a) The management plan for the recreational area has not been prepared, or;

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological site.

CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historical or archaeological site.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.17. Class 17, Open Space Contracts or Easements.

In accordance with Section 15317 of Title 14 of the California Administrative Code, Class 17 consists of the acceptance of easements or fee interests in order to maintain the open space character of the area.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

§ 12102.25. Class 25, Transfer of Ownership of Interest in Land to Preserve Open Space.

In accordance with Section 15325 of Title 14 of the California Administrative Code, Class 25 consists of the transfer of ownership of interests in land in order to preserve open space. Examples include but are not limited to:

(a) Acquisition of areas to preserve open space;

(b) Acquisition to allow restoration and enhancement of natural conditions;

(c) Acquisition to prevent encroachment of development into stream environment zones.

NOTE: Authority cited: Section 66906.4, Government Code; and Section 21082, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9-8-87; operative 10-8-87 (Register 87, No. 37).

Article 5. California Tahoe Conservancy—Conflict of Interest Code

§ 12120. Incorporation of Standard Conflict of Interest Code.

The terms of Title 2, California Administrative Code, Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, along with the following appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Conservancy.

NOTE: Authority cited: Sections 66906.4, 87300 and 87304, Government Code. Reference: Section 87300 et seq., Government Code.

HISTORY

1. New section (including Appendix) filed 11-20-87; operative 12-20-87. Approved by Fair Political Practices Commission on 10-13-87 (Register 87, No. 48).

Appendix

Designated Positions	*Category*
Chairman, all board members and alternates; the Executive Officer and all professional staff except the following: administrative secretary, administrative assistant, clerical staff, interns, graduate assistants, work study students, and staff services analyst.	A
Consultants and contractors paid by the Conservancy.*	A
Interns and graduate assistants (other than work study students) paid by the Conservancy.	A
Staff services analyst	B

* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director/Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's/Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Disclosure Categories

Category A

Persons in this category must report all investments, interest in real property, income, and any management position with any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management, subject to the following limitations:

(a) Income, other than a gift, is reportable only if it is received from a source within the region or, if that source is doing business within the region, planning to do business within the region, or has done business within the region during the two–year period prior to the time any statement is required under this code.

(b) An interest in real property is reportable only if the property, or any part of it, is located within or not more than two miles outside the boundaries of the region.

(c) Investments are reportable only if the business entity has an interest in real property in the region, or does business, or plans to do business, in the region, or has done business within the region at any time during the two–year period prior to the time any statement is required under this code.

(d) Business entities are reportable for purposes of management position disclosure, only if the business entity is doing business, or plans to do business, within the region or has done business within the region at any time during the two years prior to the time any statement is required under these regulations.

Category B

Persons in this category are subject to the same filing requirements as persons in Category A with the following additional limitations:

Income, investments and management positions are only reportable if the source of income or business entity is likely to do business with the Conservancy to provide services, equipment, or machinery of the type used by the Conservancy.

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Division 5.4. California Tahoe Regional Planning Agency

Editorial Note: The regulations, plans and ordinances of the California Tahoe Regional Planning Agency may be obtained by purchasing them from:

CALIFORNIA TAHOE REGIONAL PLANNING AGENCY
P.O. BOX 14467 OR 3053 HARRISON AVE.
SOUTH LAKE TAHOE, CALIFORNIA 95702
TELEPHONE: (916) 541-6770

NOTE: Authority cited: Sections 67048, 67101, 87300 and 87304, Government Code. Reference: Sections 11385, and 87300 et seq., Government Code.

HISTORY

1. Chapters 1–10 (Sections 1–116, not consecutive) refiled 7–17–78; designated effective 3–2–78. This filing contained *all* current regulations of the California Tahoe Regional Planning Agency (Register 78, No. 29). For prior history, see Register 77, No. 35.
2. Repealer of Sections 100–105.10 and new Section 100 (Conflict of Interest Code) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).

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Division 5.5. California Coastal Commission*

(Originally Printed 1–22–77)

*Division 5.5 formerly California Coastal Zone Conservation Commission.

Chapter 1. General Provisions

Article 1. Interpretation of Regulations

§ 13001. Purpose of Regulations.

These regulations are promulgated pursuant to the California Coastal Act of 1976, as it may be amended from time to time, to enable the California Coastal Commission to carry out the purposes and provisions of the Act. No attempt has been made to reproduce in these regulations the definitions, policies, and other provisions found in the Act. Therefore, these regulations should be read together with the Act.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Repealer of Division 5.5 (Sections 13001–14000, not consecutive) and new Division 5.5 (Sections 13001–13250, not consecutive) filed 1–19–77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Registers 73, No. 11; 73, No. 20; 73, No. 27; 73, No. 34; 74, No. 9; 74, No. 11; 74, No. 17; 74, No. 23; 74, No. 34; 74, No. 49; 74, No. 52; 75, No. 25; 75, No. 29; 75, No. 52; and 76, No. 31.
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).

§ 13002. Explanation of References.

Reference in these regulations to "Chapter," "Subchapter," "Article," "Section," and "Subsection" denote subdivisions of these regulations. References to the California Coastal Act of 1976, codified as Division 20 of the Public Resources Code, are in this form: "Public Resources Code, Section _____."

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

§ 13003. Use and Effect.

Each of these regulations shall be interpreted and liberally construed to accomplish the purposes and carry out the objectives of the California Coastal Act of 1976.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30009, Public Resources Code.

HISTORY

1. Amendment filed 3–10–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13004. Reference to Commission and to Regional Commission.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 2. Definitions

§ 13006. Aggrieved Person.

An "aggrieved" person is any person who meets the requirements of Public Resources Code, Section 30801.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30801, Public Resources Code.

§ 13007. Appointed Membership.

"Appointed membership" means all the persons who have been appointed or designated to serve and have been sworn in as voting members of the commission; a vacancy on the commission shall not be computed in determining a majority or two–thirds of the appointed membership.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 7–7–98; operative 8–6–98 (Register 98, No. 28).

§ 13009. Emergency.

"Emergency," as used in Public Resources Code Section 30624, and these regulations means: a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

§ 13010. Filing of an Application.

HISTORY

1. Repealer filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13011. First Public Road Paralleling the Sea.

The "first public road paralleling the sea" means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code, which:

(a) Is lawfully open to uninterrupted public use and is suitable for such use;

(b) Is publicly maintained;

(c) Is an improved, all–weather road open to motor vehicle traffic in at least one direction;

(d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601, 30603, 30604, and 30212, Public Resources Code.

HISTORY

1. Amendment filed 4–21–81; effective thirtieth day thereafter (Register 81, No. 17).

§ 13012. Major Public Works and Energy Facilities.

(a) "Major public works" and "Major energy facilities" mean facilities that cost more than one hundred thousand dollars ($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624.

(b) Notwithstanding the criteria in (a), "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601 and 30603, Public Resources Code.

HISTORY

1. New section filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
4. Amendment filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).
5. Designation of subsection (a), new subsection (b) and amendment of NOTE filed 9–30–92; effective 10–30–92 (Register 92, No. 40).

Article 3. Official Records

§ 13013. Inspection of Public Records.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

2. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13013.5. Copies and Certification.

Copies of official records may be made and certified by the commission, the expense thereof to be borne by the person or party requesting the same.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 6257, Government Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Chapter 2. Meetings

Article 1. Regular Meetings—Time

HISTORY

1. Repealer of Article 1 (Sections 13014 and 13014.5) filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 2. Regular Meetings—Notice

§ 13015. Method of Notification.

Notice of regular meetings of the commission shall be by first class mail or other reasonable means, dispatched not later than 10 days preceding the meeting and containing an agenda listing each item to be considered. The agenda item description shall conform to Section 13063 where the item is a development permit application.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
3. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13016. Who Shall Receive Notice.

Such notice shall be mailed to commission members, to all parties to proceedings on the agenda, to others known to be interested in specific agenda items, and to any person who requests such notice in writing. The commission may require each person requesting such notice to supply self-addressed stamped envelopes for the purpose of providing such notice. The commission shall also mail the notice and agenda of the commission hearings to public libraries, building departments and city halls throughout its coastal zone area with a request that they be regularly posted on public bulletin boards or other places readily accessible to the public and shall provide the agenda to newspapers of general circulation.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30315, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13017. Substituted Notice.

Should circumstances arise substantially affecting the reliability of the U.S. Postal Service, the executive director of the commission may substitute for any notification required by these regulations to be mailed, such other form of notification reasonable under the circumstances, such as newspaper publication, radio or television broadcasting, telephonic communication, posting on public property or on property subject to a permit application, or such other reasonable means as might be available.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30315, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 3. Special Meetings

§ 13018. Time and How Called.

A special meeting of the commission may be called for any reasonable time by resolution or by written petition of a majority of the appointed members of the commission, or by written call of the chairperson.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13018.5. Notice.

Notice of any special meetings shall be given in the same manner provided in Sections 13015, 13016, and 13017.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30315, Public Resources Code.

Article 4. Emergency Meetings

§ 13019. Time and Reason For.

The chairperson of the commission may call an emergency meeting for any day and time when a situation may exist that poses danger to life, health, or property and when commission action is or may be needed in the situation.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13020. Notice.

Notice of any emergency meeting must be provided by telegram to all persons entitled to receive notice pursuant to Section 13016 and, shall be sent not less than 24 hours prior to the meeting, if possible. In addition commission members shall be notified by telephone prior to or immediately following placing of the telegraphic notice and a reasonable effort shall be made to notify the public of the meeting. Any such notice shall contain a listing of the items to be considered at the emergency meeting.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30315, Public Resources Code.

Article 5. Meetings—Quorum and Procedures

§ 13021. Quorum.

For all meetings of the commission, a quorum shall be majority of the total appointed membership of the commission. In the absence of a quorum physically present in the meeting room, the meeting proceedings shall be suspended until such time as a quorum is present within the meeting room itself.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–30–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13022. Voting—Number Required to Authorize Action.

Except as otherwise required by the California Coastal Act of 1976 or in these regulations, actions of the commission shall be by vote of a majority of commissioners physically present within the meeting room at the time of the vote.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13023. Procedures—Robert's Rules of Order.

Except where the provision of the California Coastal Act of 1976 or of these regulations provide to the contrary, or when the commission determines otherwise, the commission shall operate under the latest edition of Robert's Rules of Order.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
3. Amendment filed 7–7–98; operative 8–6–98 (Register 98, No. 28).

§ 13024. Agenda.

(a) The agenda for regular meetings of the commission shall be set by the executive director at least 10 days prior to the meeting.

(b) Items on the agenda shall be heard in the order listed. The chairperson may with the concurrence of a majority of commissioners present, order that any particular item on the agenda be trailed to a later time in the meeting where, in the opinion of the chairperson and the commission, such change is necessary to: (1) obtain the testimony of an interested person, including a government agency staff person, who has been prevented from appearing or making a presentation by unexpected factors beyond the individual's control; (2) consolidate two or more factually or legally related agenda items for a single hearing where consolidation of the items will prevent duplication of testimony; or, (3) provide time for additional staff analysis of a newly raised issue or of new information which does not require continuance of the matter to a subsequent meeting.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30315, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
4. Amendment of subsection (a) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
5. Amendment of subsection (b) filed 7–7–98; operative 8–6–98 (Register 98, No. 28).

§ 13025. Voting—Prerequisite of Notice.

The commission shall not vote upon substantive or policy matters of general importance, including permit applications when adequate descriptive notice has not been given as part of the required notice of the meeting. This shall include actions to be taken on personnel matters such as appointment or removal of Chairperson, Vice Chairperson, and Executive Director.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
4. Amendment filed 7–7–98; operative 8–6–98 (Register 98, No. 28).

§ 13025.1. Voting—Fairness and the Appearance of Fairness.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30001, 30001.5, 30004, 30006 and 30310(b), Public Resources Code; and Section 84308, Government Code.

HISTORY

1. New section filed 4–29–80 as an emergency; effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 8–28–80.
2. Amendment filed 6–4–80 as an emergency; effective upon filing (Register 80, No. 23). A Certificate of Compliance must be filed by 8–28–80 or emergency language will be repealed.
3. Certificate of Compliance including amendments transmitted to OAL 8–26–80 and filed 9–24–80 (Register 80, No. 39).
4. Editorial Correction of subsection (a) (Register 81, No. 4).
5. Repealer filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13026. Recording of Meetings.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13027. Minutes of Meetings.

HISTORY

1. Amendment of subsection (c) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Chapter 3. Officers and Staff

Article 1. Officers

§ 13028. Selection and Term of Chairperson and Vice–Chairperson.

A chairperson and vice–chairperson of the commission shall be selected and shall serve for a term to be fixed by the commission. The selection shall only take place after public notice of the proposed action has been given in accordance with Section 13015.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315 and 30316, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13029. Duties of Chairperson.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13030. Duties of Vice–Chairperson.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 2. Staff

§ 13031. Executive Director—Appointment and Term.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13032. Duties and Delegation.

(a) In accordance with the direction and policies of the commission and pursuant to Public Resources Code Section 30335, the executive director shall administer the affairs of the commission and, subject to approval by that commission, the executive director of the commission shall on behalf of the commission and in accordance with applicable state and civil service procedures, appoint such other employees as may be necessary to carry out the functions of the commission.

(b) Except as specifically provided by resolution, the executive director may delegate the performance of any of his or her functions, but such delegation(s) shall not affect his or her responsibility to see that the directions and policies of the commission are carried out fully and faithfully.

(c) The executive director of the commission shall, when authorized by resolution of the commission, establish administrative procedures necessary to implement these regulations. Such administrative procedures shall be reduced to writing, shall be kept current with any amendments thereto, and shall be made available to all persons who shall be provided a copy of such procedures upon request and upon the payment of a reasonable fee.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30335, Public Resources Code.

HISTORY

1. Amendment filed 6–11–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13033. Acting Executive Director.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter Register 82, No. 11).

§ 13034. Ombudsperson.

The Chief Counsel of the California Coastal Commission shall be the regulatory ombudsperson for the California Coastal Commission. In his or her capacity as the regulatory ombudsperson, the Chief Counsel shall review all petitions for rulemaking and shall make recommendations to the Commission on any proposed rulemaking.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 11340.7, Government Code.

HISTORY

1. New section filed 7–7–98; operative 8–6–98 (Register 98, No. 28).

Chapter 4. California Coastal Commission—Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105

FAIR POLITICAL PRACTICES COMMISSION
428 "J" STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814

SECRETARY OF STATE
ARCHIVES
1020 "O" STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 4, Division 5.5 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 4.
California Coastal Commission—
Conflict of Interest Code

13040. General Provisions
Appendix A
Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302 and 87306, Government Code.

HISTORY

1. New Chapter 4 (Sections 13040–13049) filed 4–10–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–8–78 (Register 78, No. 15).
2. Amendment of Section 13045 filed 4–29–80 as an emergency; effective upon filing (Register 80, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–28–80.
3. Amendment of Section 13045 filed 6–4–80 as an emergency; effective upon filing (Register 80, No. 23). A Certificate of Compliance must be filed by 8–28–80 or emergency language will be repealed.
4. Certificate of Compliance including amendment transmitted to OAL 8–26–80 and filed 9–24–80. Approved by Fair Political Practices Commission 8–2–80 (Register 80, No. 39).
5. Editorial correction of Section 13045 filed 12–17–80 (Register 80, No. 51).
6. Repealer of former Chapter 4 (Sections 13040–13049) and new Chapter 4 (Section 13040 and appendix) filed 2–27–85; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2–13–85 (Register 85, No. 9).
7. Editorial correction of addresses and HISTORY 2 (Register 95, No. 7).
8. Amendment of section filed 3–30–95; operative 5–1–95. Approved by Fair Political Practices Commission 10–30–91 (Register 95, No. 13).
9. Editorial correction eliminating a typographical error and providing a separate listing for appendices A and B (Register 96, No. 47).
10. Amendment of Appendix A and NOTE filed 11–19–96; operative 12–19–96. Approved by Fair Political Practices Commission 7–19–96 (Register 96, No. 47).
11. Amendment of appendices A and B filed 3–10–98; operative 4–9–98. Approved by Fair Political Practices Commission 1–5–98 (Register 98, No. 11).
12. Amendment of Appendix A filed 9–4–2001; operative 10–4–2001. Approved by Fair Political Practices Commission 7–13–2001 (Register 2001, No. 36).
13. Amendment of Appendix A filed 7–18–2003; operative 8–17–2003. Approved by Fair Political Practices Commission 4–24–2003 (Register 2003, No. 29).

Chapter 5. Coastal Development Permits Issued by Coastal Commissions

§ 13050. Scope of Chapter.

Except as specifically provided by any subdivision hereof the provisions of this chapter shall govern all coastal development permit applications required under Public Resources Code, Section 30601, and under Public Resources Code, Section 30600 where a local government has not exercised its option to administer permits as provided in Sections 13301–13327 of these regulations.

§ 13050.5. Permit Jurisdiction over Portions of a Development Not Within the Coastal Zone.

Except for the following circumstances a coastal development permit shall only be required for a development or those portions of a development actually located within the coastal zone:

(a) In the case of any division of land, a permit shall be required only for any lots or parcels created which require any new lot lines or portions of new lot lines in the coastal zone: in such instance, commission review shall be confined to only those lots or portions of lots located within the coastal zone.

(b) In the case of any development involving a structure or similar integrated physical construction, a permit shall be required for any such structure or construction which is partially in and partially out of the coastal zone.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Division 20, Public Resources Code.

HISTORY

1. New section filed 5–8–78 as an emergency; effective upon filing (Register 78, No. 19).
2. Certificate of Compliance filed 8–10–78 (Register 78, No. 32).

§ 13051. Reference to Regional Commission.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13051.5. Reference to Executive Director.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repeal filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 1. Regular Permits

Article 1. When Local Applications Must Be Made First

§ 13052. When Required.

When development for which a permit is required pursuant to Public Resources Code, Section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in section 13053. An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

(a) Tentative map approval;

(b) Planned residential development approval;

(c) Special or conditional use permit approval;

(d) Zoning change approval;

(e) All required variances, except minor variances for which a permit requirement could be established only upon a review of the detailed working drawings;

(f) Approval of a general site plan including such matters as delineation of roads and public easement(s) for shoreline access;

(g) A final Environmental Impact Report or a negative declaration, as required, including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency;

(h) Approval of dredging and filling of any water areas;

(i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances;

(j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;

(k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code; and Section 65941, Government Code.

HISTORY

1. Amendment of subsection (g) and refiling of subsection (j) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 10–20–77 as an emergency; effective upon filing (Register 77, No. 43).
3. Amendment filed 1–19–78; effective thirtieth day thereafter (Register 78, No. 3).
4. Amendment of subsection (j) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
5. Amendment of first paragraph and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13053. Where Preliminary Approvals Are Not Required.

(a) The executive director may waive the requirement for preliminary approval by other federal, state or local governmental agencies for good cause, including but not limited to:

(1) The project is for a public purpose;

(2) The impact upon coastal zone resources could be a major factor in the decision of that state or local agency to approve, disapprove, or modify the development;

(3) Further action would be required by other state or local agencies if the coastal commission requires any substantial changes in the location or design of the development;

(4) The state or local agency has specifically requested the coastal commission to consider the application before it makes a decision or, in a manner consistent with the applicable law, refuses to consider the development for approval until the coastal commission acts, or

(5) A draft Environmental Impact Report upon the development has been completed by another state or local governmental agency and the time for any comments thereon has passed, and it, along with any comments received, has been submitted to the commission at the time of the application.

(b) Where a joint development permit application and public hearing procedure system has been adopted by the commission and another agency pursuant to Public Resources Code section 30337, the requirements of Section 13052 shall be modified accordingly by the commission at the time of its approval of the joint application and hearing system.

(c) The executive director may waive the requirements of section 13052 for developments governed by Public Resources Code, section 30606.

(d) The executive director of the commission may waive the requirement for preliminary approval based on the criteria of section 13053(a) for those developments involving uses of more than local importance as defined in section 13513.

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code; and Section 65941, Government Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsections (a)(5) and (d) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of subsections (a)(3) and (d) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
4. Amendment of subsections (b)–(d), new subsection (e) and amendment of NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 2. Application for Permit

§ 13053.4. Single Permit Application.

(a) To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept for filing a second application for development which is the subject of a permit application already pending before the commission. This section shall not limit the right of an applicant to amend a pending application for a permit in accordance with the provisions of section 13072.

(b) The executive director shall not accept for filing an application for development on a lot or parcel or portion thereof which is the subject of a pending proposal for an adjustment to the boundary of the coastal zone pursuant to Public Resources Code section 30103(b).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Repealer of Article 2 (Sections 13053.5 and 13053.6) and new Article 2 (Sections 13053.4–13053.6) filed 5–29–79; effective thirtieth day thereafter (Register 79, No. 22). For history of former article, see Registers 79, No.10; 79, No. 9; and 77, No. 24.

2. Amendment of subsection (a) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer of subsection (b) and subsection relettering filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13053.5. Application Form and Information Requirements.

The permit application form shall require at least the following items:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

(d) In addition to full size drawings, maps, photographs, and other exhibits drawn to scale, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to distribute exhibits of a larger size, enough copies reasonably required for distribution to those persons on the Commission's mailing lists and for inspection by the public in the Commission office. A reasonable number of additional copies may, at the discretion of the Executive Director, be required.

(e) Any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas.

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30601.5 and 30620, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (d) and (e) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of subsection (b) filed 4–22–82; effective thirtieth day thereafter (Register 82, No. 17).
3. Amendment of subsections (a) and (d) filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13053.6. Amendment of Application Form.

The executive director of the commission may, from time to time, as he or she deems necessary, amend the format of the application form, provided, however, that any significant change in the type of information requested must be approved by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 3. Applicant's Notice Requirements

§ 13054. Identification of Interested Persons/Submission of Envelopes/Posting of Site.

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:

(1) the addresses of all residences, including each residence within an apartment or condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,

(2) the addresses of all owners of parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll, and

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s).

This list shall be part of the public record maintained by the commission for the application.

(b) The applicant shall also provide the commission with stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above. Separate stamped envelopes shall be addressed to "owner," "occupant," or the name of the interested person, as applicable. The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement for addresses identified under subsection (a)(1) and (2) above and may require that some other suitable form of notice be provided by the applicant to those interested persons pursuant to section 13063(b) of these regulations.

(c) If at the applicant's request, the public hearing on the application is postponed or continued after notice of the hearing has been mailed, the applicant shall provide an additional set of stamped, addressed envelopes that meet the requirements of section 13054(b). The additional set of stamped, addressed envelopes shall be submitted within ten days of the commission's decision to postpone or continue the hearing.

(d) At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. Such notice shall contain a general description of the nature of the proposed development. The commission shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to sign the declaration of posting, the executive director of the commission shall refuse to file the application.

(e) Pursuant to Sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment to subsections (a) and (c) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8–22–77 as an emergency; effective upon filing (Register 77, No. 35).
3. Amendment of subsection (a) filed 9–30–77, effective thirtieth day thereafter (Register 77, N 40). Amendment subs ion) a (c) filed 8–81; effective thirtieth day thereafter (Register 81, No. 5).
4. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
5. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

6. Amendment of article heading, section heading and section filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 4. Schedule of Filing Fees for Processing Permit Applications and Other Filings

§ 13055. Fees.

(a) Filing fees for processing coastal development permit applications shall be as follows:

(1) $2,500 for any development qualifying for an administrative permit.

(2) (A) For up to 4 detached, single–family residences the fee for each residence shall be based on the square footage of the proposed residence as shown in the following table:

Square Footage of Proposed Residence	*Fee*
1500 or less	$3,000
1501 to 5000	$4,500
5001 to 10,000	$6,000
10,001 or more	$7,500

(B) For more than 4 detached, single–family residences, the fee shall be as follows:

(1) For residences of 1500 square feet or less, the fee shall be $15,000 or $1,000 per residence, whichever is greater, but not to exceed $100,000;

(2) For residences of 1501 to 5000 square feet, the fee shall be $22,500 or $1,500 per residence, whichever is greater, but not to exceed $100,000;

(3) For residences of 5001 to 10,000 square feet, the fee shall be $30,000 or $2,000 per residence, whichever is greater, but not to exceed $100,000;

(4) For residences of 10,001 or more square feet, the fee shall be $37,500 or $2,500 per residence, whichever is greater, but not to exceed $100,000.

For developments that include residences of different sizes, the fee shall be based upon the average square footage of all the residences.

(C) As used herein, the term "square footage" includes gross internal floor space of the main house and attached garage(s), plus any detached structures (e.g., guest houses, detached bedrooms, in–law units, garages, barns, art studios, tool sheds, and other outbuildings.)

(3) (A) For up to 4 attached residential units the fee shall be $7,500.

(B) For more than 4 attached residential units, the fee shall be $10,000 or $750 per unit, whichever is greater, but not to exceed $50,000.

(4) All projects that include more than 50 cubic yards of grading shall be subject to an additional fee as shown on the following table:

Cubic Yards of Grading	*Fee*
51 to 100	$500
101 to 1000	$1,000
1001 to 10,000	$2,000
10,001 to 100,000	$3,000
100,001 to 200,000	$5,000
200,001 or more	$10,000

This fee does not apply to residential projects that qualify for administrative permits.

(5) For office, commercial, convention, or industrial (including energy facilities as defined in Public Resouces Code section 30107) development, and for all other development not otherwise identified in this section, the fee shall be based upon either the gross square footage as shown in (5)(A) or the development cost as shown in (5)(B) whichever is greater.

(A) Fees based upon gross square footage shall be as follows:

Square Footage of Proposed Development	*Fee*
1000 or less	$5,000
1001 to 10,000	$10,000
10,001 to 25,000	$15,000
25,001 to 50,000	$20,000
50,001 to 100,000	$30,000
100,001 or more	$50,000

(B)(1) Fees based upon development cost shall be as follows:

Development Cost	*Fee*
$100,000 or less	$3,000
$100,001 to $500,000	$6,000
$500,001 to $2,000,000	$10,000
$2,000,001 to $5,000,000	$20,000
$5,000,001 to $10,000,000	$25,000
$10,000,001 to $25,000,000	$30,000
$25,000,001 to $50,000,000	$50,000
$50,000,001 to $100,000,000	$100,000
$100,000,001 or more	$250,000

(2) As used herein, the term "development cost" includes all expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction.

(6) $1,000 for immaterial amendments to coastal development permits, and fifty percent (50%) of the permit fee that would currently apply to the permitted development for material amendments to coastal development permits.

(7) $1,000 for emergency permits. A fee paid for an emergency permit shall be credited toward the fee charged for the follow–up coastal development permit.

(8) $2,500 for temporary events that require a permit, unless the application is scheduled on the administrative calendar, in which case the fee shall be $1,000.

(b) Filing fees for filings other than coastal development permit applications shall be as follows:

(1) (A) $500 for either an extension or reconsideration of coastal development permit for a single–family dwellings.

(B) $1,000 for an extension or reconsideration of any other coastal development permit.

(2) $500 for a "de minimis" waiver of a coastal development permit application pursuant to Public Resources Code section 30624.7 and for a waiver pursuant to sections 13250(c) and 13253(c) of this title.

(3) $250 for any written confirmation of exemption from permit requirements of Public Resources Code section 30600.

(4) $1,000 for any continuance requested by the applicant, except the first continuance.

(5) The filing fee for:

(A) any certification of consistency that is submitted to the Commission pursuant to sections 307(c)(3)(A) or (B) of the Coastal Zone Management Act of 1972 (16 USC section 1456(c)(3)(A), (B)), or

(B) any appeal to the Commission pursuant to Public Resources Code sections 30602 or 30603(a)(5) by an applicant of a denial of a coastal development permit application

shall be determined in accordance with the provisions of subsection (a).

(6) The request for a boundary determination pursuant to either section 13255.1 or 13576(c) shall be accompanied by a filing and processing fee of $250. For a request for a boundary determination pursuant to section 13255.1 or 13576(c)(2) that pertains to two or more parcels, the fee shall be paid on a per parcel basis.

(7) The request for a boundary adjustment pursuant to section 13255.2 shall be accompanied by a filing and processing fee of $5,000.

(c) The fees established in this section shall be increased annually by an amount calculated on the basis of the percentage change from the year in which this provision becomes effective in the California Consumer Price Index for Urban Consumers as determined by the Department of Industrial Relations pursuant to Revenue and Taxation Code Section 2212. The increased fee amounts shall become effective on July 1 of each year. The new fee amounts shall be rounded to the nearest dollar.

(d) Fees for an after–the–fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit,

but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(e) Where a development consists of a land division including, but not limited to, lot line adjustments or issuance of a conditional certificate of compliance pursuant to Government Code section 66499.35(b), the fee shall be $3,000 for each of the first four lots, plus $1,000 for each additional lot. Conversion to condominiums shall be considered a division of the land.

(f) If different types of developments are included in one permit application, the fee shall be the sum of the fees that would apply if each development was proposed in a separate application. However, in no case shall the fee for residential development exceed $100,000 and in no case shall the fee for all other development exceed $250,000.

(g) In addition to the above fees, the commission may require the applicant to reimburse it for any additional reasonable expenses incurred in processing the permit application, including the costs of providing public notice. Notwithstanding the foregoing, the commission shall not require an applicant for a permit for one single-family dwelling to reimburse it for litigation costs or fees that the commission may incur in defending a judicial challenge to the commission's approval of the permit.

(h) The fees specified in sections (a) and (b) may be modified under the following circumstances:

(1) The executive director shall waive the application fee where requested by resolution of the commission.

(2) The executive director of the commission shall waive the filing and processing fee in full or in part for an application for a housing development that contains housing units the occupancy of which by persons of low or moderate income as defined in Health and Safety Code section 50093 is assured for the period of time specified in Government Code section 65915(c)(1). Applications for projects that will create a greater public benefit will have a larger portion of the fee waived than applications for projects that will create a lesser public benefit. The executive director will determine the degree of public benefit based on a variety of factors, including, but not limited to (A) the total number of affordable units, (B) the proportion of affordable units in the development, (C) the degree of affordability, and (D) the availability of, and demand for, affordable units in the area. Applications for projects that will exceed current requirements for affordable housing under the law will receive a larger fee waiver than applications for projects which do not.

(3) For applications received prior to January 1, 2015, the executive director of the Commission shall reduce the filing fee for projects that are certified at a minimum of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Gold standard or equivalent. The executive director shall determine if an alternative certification is equivalent to the LEED Gold standard based on a comprehensive review of the certification program's ability to ensure an equivalent or greater environmental benefit. After registering a project with an approved third-party certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute approved by the executive director in the amount of the remainder of the required filing fee. After submitting proof of certification at a minimum of LEED Gold or equivalent, the letter of credit or other cash substitute will be released by the Commission to the applicant. If the applicant does not receive a minimum of LEED Gold certification or equivalent within three years of the date of permit issuance, the Commission will cash the letter of credit or other cash substitute. The executive director may grant an extension of the three year deadline for good cause. Request for extension must be submitted to the executive director in writing at least 60 days prior to the deadline, outlining the reason for the request and the expected completion date. The extension shall not exceed one year.

(i) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620(c) and 30253, Public Resources Code.

HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsections (a) and (b) filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment of subsection (d) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
4. Amendment filed 5-30-91 as an emergency; operative 5-30-91 (Register 91, No. 31). A Certificate of Compliance must be transmitted to OAL by 9-27-91 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-91 order transmitted to OAL 9-18-92 and filed 10-21-92 (Register 92, No. 43).
6. Amendment filed 9-20-99; operative 10-20-99 (Register 99, No. 39).
7. Amendment of article heading, section and NOTE filed 3-14-2008; operative 3-14-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).
8. Editorial correction of subsection (a)(5)(B)(1) (Register 2008, No. 18).

Article 5. Determination Concerning Filing

§ 13056. Filing.

(a) A permit application shall be submitted on the form issued pursuant to sections 13053.5 and 13053.6, together with all necessary attachments and exhibits, and a filing fee pursuant to section 13055. The executive director shall file the application only after reviewing it and finding it complete. The executive director shall cause to be affixed to all applications for permits:

(1) A date of receipt reflecting the date they are received; and

(2) A date of filing reflecting the date it is filed.

(b) The executive director shall make the filing determination in writing within ten (10) working days, if feasible, but in no event later than thirty (30) calendar days after the date it is received in the offices of the commission during its normal working hours. The executive director shall mail the filing determination to the applicant.

(c) If the executive director finds the application incomplete, he or she shall specify those parts of the application which are incomplete, and describe the specific materials needed to complete the application. Not later than thirty (30) calendar days after receipt of the requested materials, the executive director shall determine whether the submittal of the requested materials is complete and transmit that determination in writing to the applicant.

(d) An applicant may appeal to the commission a determination by the executive director that an application is incomplete. The appeal shall be

submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days after receipt of the appeal of the filing determination and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code; and Sections 65943 and 65952, Government Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
4. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13056.1. Reapplication.

(a) Following a withdrawal of or a final decision upon an application for a coastal development permit, no applicant or successor in interest to an applicant may reapply to the commission for a development permit for substantially the same development for a period of six (6) months from the date of the prior withdrawal or final decision. The executive director shall decide whether an application is for "substantially the same" development as that which was withdrawn or upon which a final determination has been rendered within the filing determination period set forth in section 13056.

(b) If the executive director determines, on a case–by–case basis, that an application is for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the executive director shall reject the application for filing.

(c) If the executive director determines, on a case–by–case basis, that an application is not for substantially the same development as that which was withdrawn or upon which the commission has rendered a final decision within the previous six months, the application shall be treated as a new application.

(d) The applicant or the successor in interest to an applicant may appeal to the commission the determination of the executive director in the manner provided in section 13056. The commission may vote to overturn the determination of the executive director. Otherwise the executive director's determination shall stand.

(e) The commission or the executive director may waive the six–month waiting period provided in this section for good cause.

HISTORY

1. Renumbering and amendment of former section 13109 to new section 13056.1 filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 6. Staff Reports

§ 13057. Preparation of Staff Reports.

(a) The executive director shall prepare a written staff report for each application filed pursuant to section 13056, except as provided for in section 13058 (consolidated staff reports), section 13150 (administrative permits) and section 13238.1 (waivers of permit application). The staff report shall include the following:

(1) An adequate description, including legible and reproducible maps, plans, photographs, etc. of the proposed development, project site and vicinity sufficient to determine whether the proposed project complies with all relevant policies of the Coastal Act;

(2) A summary of significant questions of fact;

(3) A summary of the applicable policies of the Coastal Act;

(4) A copy or summary of public comments on the application;

(5) A summary of any issues of the legal adequacy of the application to comply with the requirements of the Coastal Act;

(6) Staff's recommendation, including specific findings, prepared in accordance with subsection (c).

(b) The staff report shall also include as applicable:

(1) A copy or summary of the Environmental Impact Report or Environmental Impact Statement as it relates to the issues of concern to the commission, or if no such report was prepared, any negative declaration or finding of no significant impact;

(2) A discussion of related previous applications;

(c) The staff's recommendation required by subsection (a)(6) above shall contain:

(1) Specific findings, including a statement of facts, analysis, and legal conclusions as to whether the proposed development conforms to the requirements of the Coastal Act including, but not limited to, the requirements of Public Resources Code section 30604.

(2) Specific findings evaluating the conformity of the development with the requirements of section 21080.5(d)(2)(A) of the Public Resources Code.

(3) Responses to significant environmental points raised during the evaluation of the proposed development as required by the California Environmental Quality Act.

(4) A recommendation as to whether the commission should grant the application, with or without conditions, or deny the application.

(5) In the case of a recommendation of approval with conditions, identification of the specific conditions recommended by the executive director and a discussion of why the identified conditions are necessary to ensure that the development will be in accordance with the Coastal Act.

(d) Notwithstanding the requirement of subsection (a)(6) hereof, with respect to any application, the executive director may elect to prepare first a partial staff report that does not contain the recommendation required by subsection (c)(4) and (c)(5) where he or she determines that public comment and commission discussion would facilitate preparation of such recommendation. The executive director shall comply with all other procedures applicable to staff reports including procedures for the distribution of staff reports and for the noticing of hearings.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30604, 30607 and 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. New NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer and new article heading and section filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

[The next page is 597.]

§ 13058. Consolidation of Staff Reports; Consolidation of Public Hearings.

Where two or more applications are legally or factually related, the executive director may prepare a consolidated staff report. Either the commission or the executive director may consolidate a public hearing where such consolidation would facilitate or enhance the commission's ability to review the developments for consistency with the requirements of the Coastal Act. A separate vote shall be taken for each application.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13059. Distribution of Staff Reports.

The executive director shall distribute the staff report by mail to all members of the commission, to the applicant(s), to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to the proposed development and to all persons who specifically requested it. With respect to all other persons known to have a particular interest in the application, including those specified in section 13054(a), the executive director shall provide notice pursuant to section 13063 or 13015 that the staff report shall be distributed only to those persons who request it. Staff reports shall be distributed within a reasonable time to assure adequate notification prior to the scheduled public hearing. The staff report may either accompany the meeting notice required by section 13015 or may be distributed separately. The commission may require any person who desires copies of staff reports to provide a self–addressed stamped envelope for each desired mailing. The commission may also require that interested persons provide reimbursement for duplicating costs.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code; and Section 6253, Government Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 7. Public Comments on Applications

§ 13060. Written Comments on Applications and Staff Reports.

Written communications regarding applications and staff reports shall be distributed in accordance with the following procedures:

(a) Except as stated in subsection (c) below, the executive director shall distribute to all commission members the text or a summary of all relevant communications which are received prior to the close of the public testimony portion of the public hearing.

(b) Written communications must be received by the executive director in the appropriate district office prior to the day of the hearing or in the hearing room on the day of the public hearing. The executive director does not accept responsibility for the cost or delivery of written communications to the hearing room.

(c) The executive director may summarize communications orally rather than distribute the communications to each commission member if the executive director receives lengthy communications, a sizable number of similar communications, or communications received too late to provide copies to the commission.

(d) Written communications shall be available at the commission office for review by any person during normal working hours.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code; and Section 6253, Government Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13061. Treatment of Similar Communications.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 8. Hearing Dates

§ 13062. Scheduling.

The executive director of the commission shall set each application filed for public hearing no later than the 49th day following the date on which the application is filed. All dates for public hearing shall be set with a view toward allowing adequate public dissemination of the information contained in the application prior to the time of the hearing, and toward allowing public participation and attendance at the hearing while affording applicants expeditious consideration of their permit applications.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY

1. Amendment filed 5–29–79; effective thirtieth day thereafter (Register 79, No. 22).
2. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
3. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
4. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13063. Distribution of Notice.

(a) At least 10 calendar days prior to the date on which the application will be heard by the commission, the executive director shall mail written notice to each applicant, to all affected cities and counties, to all public agencies which have jurisdiction, by law, with respect to a proposed development, to all persons who have requested it, and to all persons known by the executive director to have a particular interest in the application, including those specified in section 13054(a). The notice shall contain the following elements:

(1) The number assigned to the application;

(2) A description of the development and its proposed location;

(3) The date, time and place at which the application will be heard by the commission;

(4) The general procedure of the commission concerning hearings and action on applications;

(5) The direction to persons wishing to participate in the public hearing that testimony should be related to the regional and statewide issues addressed by the Coastal Act; and

(6) A statement that staff reports will be distributed as set forth in section 13059.

(b) In lieu of providing mailed notice to persons specified in section 13054(a)(1)–(2) as required by subsection (a) above, the executive director may direct the applicant to substitute notice in one or more newspapers of general circulation in the area of the project for the written mailed notice if the executive director determines:

(1) It is reasonable to expect adequate or better notice to interested parties through publication; and

(2) Written notice to individuals would be unreasonably burdensome to the applicant in view of the overall cost and type of project involved.

A statement of reasons supporting the executive director's determination to direct the applicant to substitute newspaper notice shall be placed in the file.

(c) Where a public agency or other person identified in this section receives the notice required by sections 13015–13017, a separate notice is not required pursuant to this section.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30620 and 30621, Public Resources Code.

HISTORY

1. Amendment filed 8–22–77 as an emergency; effective upon filing (Register 77, No. 35). For prior history, see Register 77, No. 24.
2. Certificate of Compliance filed 12–22–77 (Register 77, No. 52).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
4. Amendment of section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 9. Oral Hearing Procedures

§ 13064. Conduct of Hearing.

The commission's public hearing on a permit matter shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13065. Evidence Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the chairperson of the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13066. Order of Proceedings.

The commission's public hearing on a permit application shall, unless the chairperson directs otherwise, proceed in the following order:

(a) The executive director shall make a presentation to the commission identifying the application, describing the project, and summarizing the staff recommendation, including the proposed findings, proposed conditions, and written correspondence received prior to the public hearing.

(b) The public testimony portion of the public hearing shall proceed in the following order:

(1) Persons or their representatives desiring to state their views on the application shall have the opportunity to do so as follows:

(A) The applicant;

(B) Other persons supporting the application;

(C) Persons opposing the application;

(D) Other persons.

(2) The chairperson may allow rebuttal testimony by the applicant in accordance with Public Resources Code section 30333.1(a).

(3) The executive director may respond to and comment, as appropriate, on the testimony presented by any previous speaker.

(4) The chairperson may close the public testimony portion of the public hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(c) Questions by commissioners will be in order at any time following any person's presentation.

(d) At the conclusion of the public testimony portion of the public hearing, the executive director may propose to change the staff recommendation or the commission may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the executive director shall have an opportunity to comment briefly and specifically on any proposed change.

(e) The commission shall vote on a permit application in accordance with section 13090.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and 30333.1, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13067. Speaker's Presentations.

(a) Speakers' presentations shall be to the point and shall be as brief as possible. The commission may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The chairperson may require individuals to consolidate their comments to avoid repetition.

(b) In order for audio, visual or audio–visual materials to be considered by the commission, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(c) The speaker must submit all materials presented at the public hearing to the staff for inclusion in the record of the proceeding. Any speaker who, as part of his or her presentation, exhibits models or other large materials may satisfy this requirement by: (1) submitting accurate reproductions or photographs of the models or other large materials and (2) agreeing in writing to make such materials available to the commission if necessary for any administrative or judicial proceeding.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer and new section filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13068. Other Speakers.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Repealer of subsection (c) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer of section and new NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 10. Field Trips

§ 13069. Field Trips—Procedures.

Whenever the commission is to take a field trip to the site of any proposed project, the chairperson shall decide, and the executive director shall provide public notice of the time, location and intended scope of the field trip.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 11. Additional Hearings, Withdrawal and Off-Calendar Items, Amended Applications

§ 13070. Continued Hearings.

A public hearing on an application may be completed in one commission meeting. However, the commission may vote to continue the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed to the persons and in the manner provided for in section 13063.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13071. Withdrawal of Application.

(a) At any time before the commission commences calling the roll for a vote on an application, an applicant may withdraw the application.

(b) Withdrawal must be in writing or stated on the record and does not require commission concurrence. Withdrawal shall be permanent except that the applicant may file a new application for the same development subject to the requirements of sections 13056 and 13056.1.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30333 and 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (c) filed 6–14–78 as an emergency; effective upon filing (Register 78, No. 24).
3. Certificate of Compliance filed 8–10–78 (Register 78, No. 32).
4. Amendment filed 5–29–79; effective thirtieth day thereafter (Register 79, No. 22).
5. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
6. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
7. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
8. Amendment of subsection (b) and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13072. Procedures for Amended Application.

(a) If prior to the public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the executive director shall prepare a staff report pursuant to section 13057 and the commission shall vote on the amended application only if:

(1) The applicant agrees in writing to extend the final date for public hearing or

(2) The executive director determines that staff does not need additional time to prepare the staff report or provide notice to the public.

(b) If at the public hearing on an application, an applicant wishes to amend the application in a manner the executive director determines is material, the commission may vote on the amended application at that public hearing if:

(1) Adequate public notice has already been provided and

(2) The proposed amended project was adequately reviewed during the public hearing.

(c) Conditions recommended by the executive director or imposed by previous commission action shall not be considered an amendment to the application.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsections (b) and (c) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 12. Preparation of Staff Recommendation

§ 13073. Applicant's Postponement.

(a) Where an applicant for a coastal development permit determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. The applicant's right to postpone shall be exercised prior to commencement of the public testimony portion of the public hearing.

(b) An applicant's request for postponement, not made as a matter of right pursuant to section 13073(a), shall be granted at the commission's discretion. The executive director shall, to the extent feasible, notify all persons the executive director knows to be interested in the application of the postponement. The commission shall not grant a request for postponement under this subdivision unless it determines that sufficient time remains under applicable deadlines for its action on the application.

(c) Any request for postponement pursuant to subsections (a) or (b) shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application. Where a request for postponement is granted pursuant to subsections (a) or (b), the applicant shall provide another set of stamped, addressed envelopes consistent with the requirements of section 13054.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620 and 30621, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Repealer of former section 13073 and renumbering of former section 13085 to section 13073, including amendment of section and NOTE, filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13074. Rescheduling.

Where consideration of an application is postponed, the executive director shall, to the extent feasible, schedule further consideration of the application by the commission at a time and location convenient to all persons interested in the application. Notice of the rescheduled hearing shall be distributed to the persons and in the manner provided for in section 13063.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006 and 30621, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer of former section 13074 and renumbering of former section 13087 to section 13074, including amendment of section and NOTE, filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13075. Final Staff Recommendation.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30604 and 30625, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13076. Distribution of Final Staff Recommendation.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

2. New NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13077. Written Response to Staff Recommendation.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. New NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 13. Commission Review of Staff Recommendation

§ 13080. Alternatives for Review of Staff Recommendation.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. New NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of Article 13 heading only filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
3. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13081. Staff Recommendation Included in Application Summary.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13082. Verbal Staff Recommendation upon Conclusion of Public Hearing.

NOTE: Authority and reference cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Repealer of subsection (b) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13083. Consideration of Staff Recommendation at a Meeting Subsequent to the Oral Hearing.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
4. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13084. Procedures for Presentation of Staff Recommendation and Responses of Interested Parties.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (d) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of subsection (b) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
4. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13085. Applicant's Postponement.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
3. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
4. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
5. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
6. Renumbering of former section 13085 to section 13073 filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13087. Rescheduling.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30006, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Renumbering of former section 13087 to section 13074 filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 14. Voting Procedure

§ 13090. Voting—After Recommendation.

(a) A vote on an application may be taken only at a properly noticed public hearing after the commission has received the staff recommendation identified in section 13057 and obtained public testimony, if any, in accordance with section 13066.

(b) Where the executive director has distributed a staff report containing all of the elements described in section 13057(a), (b) and (c), the commission may vote upon the application after conclusion of the public testimony portion of the public hearing.

(c) Where, in accordance with the provisions of section 13057(d), the executive director has prepared a partial staff report that does not contain the parts of the staff recommendation identified in sections 13057(c)(4) and (5), the commission shall proceed in accordance with one of the following alternative procedures:

(1) If the commission is prepared to vote immediately upon conclusion of the public testimony portion of the public hearing, the executive director shall provide an oral recommendation and summary of proposed findings.

(2) Upon conclusion of the public testimony portion of the public hearing, the commission may put the vote on the application over to a subsequent meeting. Prior to the subsequent meeting the executive director shall prepare a staff report that shall:

(A) contain a staff recommendation as described in section 13057(c) and

(B) respond to:

1. testimony and other evidence presented at the public hearing, and

2. comments on the application by members of the commission. The executive director may also supplement the analysis of the application contained in the preliminary staff report.

(3) At the subsequent meeting, the executive director shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions, in the same manner as provided for staff reports in section 13066. Immediately following the presentation of the staff recommendation, the commission shall obtain public testimony in the manner provided for in section 13066.

(d) Where the commission moves to vote on an application with terms different from those proposed by the applicant in the application or conditions different than those proposed by the staff in the staff recommendation, the applicant, appellant, and the executive director shall have an opportunity to state briefly and specifically their views on the conditions.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30315, 30333, 30333.1 and 30622, Public Resources Code.

HISTORY
1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Repealer and new section filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13091. Voting Time and Manner.

NOTE: Authority and reference cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY
1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Repealer filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13092. Effect of Vote Under Various Conditions.

(a) Votes by the commission shall only be on the affirmative question of whether the permit should be granted; i.e., a "yes" vote shall be to grant a permit and a "no" vote to deny. Unless a motion is adopted pursuant to subsection (b), a motion to grant the permit shall be deemed to include the terms proposed in the project description as modified by the applicant at the hearing and the conditions and findings proposed in the staff report as modified by staff at the hearing.

(b) Any commissioner may move to add, delete or modify proposed terms, conditions or findings. Such a motion shall be made in the affirmative.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY
1. Amendment of subsections (a) and (d) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13093. Straw Votes.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY
1. Repealer filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 18).

§ 13094. Voting Procedure.

(a) Voting upon permit applications shall be by roll call, with the chairperson being polled last.

(b) Members may vote "yes" or "no" or may abstain from voting, but an abstention shall not be deemed a "yes" vote.

(c) Any member may change his or her vote prior to the tally having been announced by the chairperson, but not thereafter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY
1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. New NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13095. Voting by Members Absent from Hearing.

A member or alternate who has been absent from all or part of the hearing may vote on any application provided the member or alternate has familiarized himself or herself with the evidence presented at the hearing on the application and has so declared prior to the vote. In the absence of a challenge raised by an interested party, inadvertent failure to make such a declaration prior to the vote shall not invalidate the vote of a member or alternate.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30315, Public Resources Code.

HISTORY
1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
2. Amendment of NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13096. Commission Findings.

(a) All decisions of the commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code section 30604 and Public Resources Code section 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315.1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 21080.5, 30006, 30315.1, 30333, 30604 and 30621, Public Resources Code.

HISTORY
1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
3. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
4. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
5. Amendment of subsection (a), repealer of subsections (b) and (c) and relettering and amendment of subsection (d) to subsection (b) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
6. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
7. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 15. Consent Calendar Procedures

§ 13100. Consent Calendar.

Permit applications which, as submitted or as recommended to be conditioned, in the opinion of the executive director do not raise significant issues with respect to the purposes and objectives of the Coastal Act, may be scheduled for one public hearing during which all such items will be taken up as a single matter. This procedure shall be known as the Consent Calendar.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY
1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13101. Procedures for Consent Calendar.

Unless otherwise provided in this Article, the procedures set forth in Chapter 5 of these regulations pertaining to permit applications, including staff reports, staff recommendations, resolutions, and voting, shall apply to the consent calendar procedure. All included items shall be considered by the commission as if they constituted a single permit application. The public shall have the right to present testimony and evidence concerning any item on the consent calendar.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY
1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

2. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13102. Removal of Consent Calendar Items to Regular Calendar.

The executive director may include recommended conditions in staff reports for consent calendar items which shall then be deemed approved by the commission if the item is not removed by the commission from the consent calendar. No condition of approval of any consent calendar item may be added, deleted or substantially modified after the staff report has been mailed to the public unless the commission removes the item to the regular calendar or schedules the revised item for a subsequent consent calendar.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30607 and 30621, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners request that an item be scheduled for public hearing on the regular permit calendar, the item shall be removed from the consent calendar. If any item is removed from the consent calendar, the public hearing on the item shall be continued until it can be scheduled on the regular permit calendar.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30621, Public Resources Code.

HISTORY

1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 16. Revocation of Permits

§ 13104. Scope of Article.

The provisions of this article shall govern proceedings for revocation of a coastal development permit previously granted by a regional commission or the commission.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Sections 30519 and 30600, Public Resources Code.

HISTORY

1. New Article 16 (Sections 13104–13108) filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13105. Grounds for Revocation.

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13106. Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Repealer and new section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 3).

§ 13108. Hearing on Revocation.

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in Section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

2. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
3. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
4. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13108.5. Finality of Regional Commission Decision.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 17. [Reserved]

§ 13109. Reapplication.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. New Article 17 (Section 13109) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Repealer of article heading and renumbering of former section 13109 to new section 13056.1 filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 18. Reconsideration

§ 13109.1. Scope of Article.

The provisions of this article shall govern proceedings for reconsideration of terms or conditions of a coastal development permit granted or of a denial of a coastal development permit by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30305 and 30627, Public Resources Code.

HISTORY

1. New Article 18 (Sections 13109.1–13109.6) filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
4. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13109.2. Initiation of Proceedings.

(a) Any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request the commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the district office at which the original permit application was filed within thirty (30) days of the final vote.

(b) The executive director shall prepare a staff report with a recommendation on the merits of the request for reconsideration. The staff report shall analyze whether the request satisfies the grounds for reconsideration provided in Public Resources Code section 30627. The staff report shall be distributed to the persons and in the manner provided for in section 13059.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13109.3. Suspension of Appeal.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

HISTORY

1. Amendment filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13109.4. Grounds for Reconsideration.

Grounds for reconsideration of a permit action shall be as provided in Public Resources Code Section 30627.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13109.5. Hearing on Reconsideration.

(a) The executive director shall schedule a hearing on the reconsideration request at the next regularly scheduled meeting or as soon as practicable after the executive director distributes notice of the hearing consistent with the provisions of section 13063. The executive director shall report the request for reconsideration to the commission with a preliminary recommendation on the grounds for reconsideration.

(b) The applicant and all aggrieved parties to the original commission decision shall be afforded a reasonable time to address the merits of the request.

(c) Reconsideration shall be granted by a majority vote of the commissioners present. If reconsideration is granted, the application shall be processed as a new application in accordance with sections 13050–13120 and sections 13156–13168 of these regulations, as applicable. However, no new fee shall be charged to process the new application.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30006, 30621 and 30627, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
2. Amendment of subsections (a)–(c) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of subsection (d) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).
4. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13109.6. Finality of Regional Commission Decision.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30627, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 2. Appeals to State Commission

§ 13110. Commission Procedures upon Receipt of Notice of Final Local Action.

Within three (3) working days of receipt of notice of final local decision, the executive director of the Commission shall post a description of the development in a conspicuous location in the Commission office and the appropriate district office. The executive director shall at the same time mail notice of the local action to the members of the Commission. The ten working day appeal period shall be established from the date of receipt of the notice of the final local government action.

NOTE: Authority cited: Sections 30333 and 30620.6, Public Resources Code. Reference: Sections 30603 and 30620.6, Public Resources Code.

HISTORY

1. Repealer of Subchapter 2 (Articles 1–4, Sections 13110–13129, not consecutive) and new Subchapter 2 (Sections 13110–13120) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33). For prior history, see Registers 80, No. 19; 80, No. 1; 79, No. 22; 78, No. 32; 78, No. 3; 77, No. 35; 77, No. 24; 77, No. 18; 77, No. 7.

§ 13111. Filing of Appeal.

(a) An appeal of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two (2) members of the Commission. The appeal must contain the following information:

(1) the name and address of the permit applicant and appellant;

(2) the date of the local government action;

(3) a description of the development;

(4) the name of the governing body having jurisdiction over the project area;

(5) the names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;

(6) the names and addresses of all other persons known by the appellant to have an interest in the matter on appeal;

(7) the specific grounds for appeal;

(8) a statement of facts on which the appeal is based;

(9) a summary of the significant question raised by the appeal.

The filing of the notice of appeal should also contain information which the local government has specifically requested or required.

(b) For an appeal to the Commission by an applicant pursuant to Public Resources Code sections 30602 or 30603(a)(5) of a denial of a coastal development permit application, the applicant shall submit a filing fee in accordance with the provisions of section 13055(b)(5)(B).

(c) The appeal must be received in the Commission district office with jurisdiction over the local government on or before the tenth (10th) working day after receipt of the notice of the permit decision by the executive director.

(d) The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Sections 30620(c), 30620.6 and 30625, Public Resources Code.

HISTORY

1. New subsection (b), subsection relettering and amendment of NOTE filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

§ 13112. Effect of Appeal.

(a) Upon receipt in the Commission office of a timely appeal by a qualified appellant, the executive director of the Commission shall notify the permit applicant and the affected local government that the operation and effect of the development permit has been stayed pending Commission action on the appeal by the Commission as required by Public Resources Code Section 30623. Upon receipt of a Notice of Appeal the local government shall refrain from issuing a development permit for the proposed development and shall, within five (5) working days, deliver to the executive director all relevant documents and materials used by the local government in its consideration of the coastal development permit application. If the Commission fails to receive the documents and materials, the Commission shall set the matter for hearing and the hearing shall be left open until all relevant materials are received.

NOTE: Authority cited: Section 30333, 30620.6, Public Resources Code. Reference: Section 30623, Public Resources Code.

§ 13113. Grounds of Appeal.

The grounds of appeal for any development appealable under Public Resources Code Section 30603(a) shall be limited to those specified in Public Resources Code Section 30603(b) and (c).

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Sections 30603 and 30623, Public Resources Code.

HISTORY

1. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13114. De Novo Review.

Where the appellant has exhausted local appeals a de novo review of the project by the Commission shall occur only after the local decision has become final.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Section 30621, Public Resources Code.

§ 13115. Substantial Issue Determination.

(a) At the meeting next following the filing of an appeal with the Commission or as soon thereafter as practical, the executive director shall make a recommendation to the commission as to whether the appeal raises a significant question within the meaning of Section 30625(b).

(b) Unless the Commission finds that the appeal raises no significant question as to conformity with the certified local coastal program or, in the case of a permit application for a development between the sea and the first public road paralleling the sea (or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach) that there is no significant question with regard to the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976, the Commission shall consider the application de novo in accordance with the procedures set forth in Sections 13057–13096.

(c) The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to hear an appeal. A majority vote of the members of the Commission present shall be required to determine that the Commission will not hear an appeal.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Sections 30603, 30621, Public Resources Code.

§ 13116. Withdrawal of Appeal.

At any time before the Commission commences the roll call for a final vote on an appeal, the appellant may withdraw the appeal. The withdrawal must be in writing or stated on the record and does not require Commission concurrence. If the appellant withdraws the appeal, the action of the local government shall automatically become final unless the appeal period of Public Resources Code Section 30622 has not run.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Section 30620.6, Public Resources Code.

§ 13117. Qualifications to Testify Before Commission.

Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify at the Commission hearings at any stage of the appeal process. All other persons may submit comments in writing to the Commission or executive director, copies or summaries of which shall be provided to all Commissioners pursuant to Sections 13060–13061.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Section 30620.6, Public Resources Code.

§ 13118. Evidence.

Evidence before the Commission includes, but is not limited to, the record before the local government. Except in unusual circumstances the record will not include a transcript of the local government proceedings unless provided by a party to the proceedings.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Section 30620.6, Public Resources Code.

§ 13119. Standard of Review.

The standard of review for any appealable development shall be whether or not the development meets the requirements of Public Resources Code Sections 30604(b) and (c).

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Sections 30603, 30604, Public Resources Code.

§ 13120. Commission Notification of Final Action.

Within ten (10) working days of a final Commission action on appeal from a local government decision, the Commission shall transmit notice of the action taken to the local government, the applicant and the appellant.

NOTE: Authority cited: Sections 30333, 30620.6, Public Resources Code. Reference: Section 30620.6, Public Resources Code.

Subchapter 3. Applications Filed Under the California Coastal Zone Conservation Act of 1972

(Former Division 18 of the Public Resources Code)

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Repealer of Subchapter 3 (Sections 13131–13135) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33). For prior history, see Register 77, No. 24.

Subchapter 4. Permits for an Approval of Emergency Work

Article 1. General

§ 13136. Scope of Subchapter.

This Subchapter governs procedures for processing applications for permits to perform work to resolve problems resulting from a situation falling within the definition of "emergency" in Section 13009 and pursuant to the provisions of Public Resources Code Section 30624 for which the Commission has jurisdiction pursuant to Section 30519(b).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13137. Immediate Action Required.

It is recognized that in some instances a person or public agency performing a public service may need to undertake work to protect life and public property, or to maintain public services before the provisions of the Subchapter can be fully complied with. Where such persons or agencies are authorized to proceed without a permit pursuant to Public Resources Code, Section 30611, they shall comply with the requirements of Public Resources Code Section 30611 and to the maximum extent feasible, with the provisions of this Subchapter.

Article 2. Applications

§ 13138. Method of Application.

Applications in cases of emergencies shall be made to the executive director of the commission by letter or facsimile during business hours if time allows, and by telephone or in person if times does not allow.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13139. Necessary Information.

The information to be reported during the emergency, if it is possible to do so, or to be reported fully in any case after the emergency as required in Public Resources Code Section 30611, shall include the following:

(a) The nature of the emergency;

(b) The cause of the emergency, insofar as this can be established;

(c) The location of the emergency;

(d) The remedial, protective, or preventive work required to deal with the emergency; and

(e) The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

Article 3. Procedures

§ 13140. Verification of Emergency.

The executive director of the commission shall verify the facts, including the existence and nature of the emergency, insofar as time allows.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13141. Consultation with Executive Director of the Commission.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13142. Criteria for Granting Permit.

The executive director shall provide public notice of the proposed emergency action required by Public Resources Code Section 30624, with the extent and type of notice determined on the basis of the nature of the emergency itself. The executive director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the executive director finds that:

(a) An emergency exists and requires action more quickly than permitted by the procedures for administrative permits, or for ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;

(b) Public comment on the proposed emergency action has been reviewed if time allows; and

(c) The work proposed would be consistent with the requirements of the California Coastal Act of 1976.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).

§ 13143. Report to the Commission.

(a) The executive director shall report in writing to the local government having jurisdiction over the project site and to the commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.

(b) All emergency permits issued after the mailing for the meeting shall be briefly described by the executive director at the meeting and the written report required by subparagraph (a) shall be distributed prior to the next succeeding meeting.

(c) The report of the executive director shall be informational only; the decision to issue an emergency permit is solely at the discretion of the executive director of the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

3. Amendment of subsection (c) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

Article 4. Emergency Actions Without a Permit

§ 13144. Waiver of Emergency Permit Requirements.

Any person wishing to take an emergency action pursuant to the requirements of Public Resources Code Section 30611 shall notify the executive director of the commission by facsimile or telephone during business hours of the type and location of the emergency action taken within three (3) days of the disaster or the discovery of the danger. Within seven (7) days of taking such action, the person who notified the executive director shall send a written statement of the reasons why the action was taken and verification that the action complied with the expenditure limits set forth in Public Resources Code Section 30611. At the next commission meeting following the receipt of the written report, the executive director shall summarize all emergency actions taken and shall report to the commission any emergency action that, in his or her opinion, does not comply with the requirements of Public Resources Code Section 30611 and shall recommend appropriate action. For the purposes of this section, any immediate, temporary actions taken by the California Department of Fish and Game which are required to protect the nesting areas of the California least tern, an endangered species under the California Fish and Game Code, Sections 2050–2055 and Title 14 of the California Code of Regulations, Section 670.5, and the Federal Endangered Species Act of 1973, shall be deemed to be in compliance with Public Resources Code Section 30611.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30611, Public Resources Code.

HISTORY

1. Amendment filed 4–27–78 as an emergency; effective upon filing (Register 78, No. 17).
2. Certificate of Compliance filed 8–12–78 (Register 78, No. 32).
3. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Subchapter 5. Procedures for Administrative Permits

Article 1. General

§ 13145. Scope of Subchapter.

This subchapter governs special procedures for processing applications for permits pursuant to the requirements of Public Resources Code Section 30624.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 11–3–78 as an emergency; effective upon filing (Register 78, No. 44).
3. Certificate of Compliance transmitted to OAH 2–26–79 and filed 3–15–79 (Register 79, No. 10).
4. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
5. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 2. Application for Administrative Permits

§ 13146. Applicant's Statement.

The permit application form provided for in Section 13053.5 shall allow the applicant an opportunity to state that in his or her opinion the work applied for falls within the criteria established by Public Resources Code, Section 30624.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30620 and 30624, Public Resources Code.

HISTORY

1. Amendment and new NOTE filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13147. Applications Not Thought to Be Administrative.

If the commission receives an application that is asserted to be for improvements or other development within the criteria established pursuant to Public Resources Code Section 30624 and by this subchapter and if the executive director finds that the application does not qualify as such, he or she shall notify the applicant that a regular permit application is required as provided in Subchapter 1 of this chapter. The executive director, with the concurrence of the applicant, may accept the application for filing as a regular permit pursuant to Section 13056 and shall adjust the application fees accordingly.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13148. Copies of Application.

An application asserted to be within the criteria established by Public Resources Code Section 30624 shall be furnished to the commission initially in one (1) copy, together with one copy of whatever maps and drawings are reasonably required to describe the proposal. A reasonable number of additional copies may, at the discretion of the executive director, be required.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13149. Notice.

The applicant shall post notice at the project site as required by Section 13054(b) and provide any additional notice to the public that the executive director deems appropriate. The executive director shall notify any persons known to be interested in the proposed development.

Article 3. Criteria for Granting Administrative Permits

§ 13150. Criteria and Content of Permits.

(a) The executive director may approve or modify an application for improvements or other development governed by this subchapter on the same grounds that the commission may approve an ordinary application and may include reasonable terms and conditions required for the development to conform with the policies of the California Coastal Act of 1976.

(b) Permits issued for such developments shall be governed by the provisions of Sections 13156 and 13158 concerning the format, receipt, and acknowledgment of permits, except that references to "Commission Resolution" shall be deemed to refer to the executive director's determination. A permit issued pursuant to Public Resources Code Section 30624

shall contain a statement that it will not become effective until completion of the commission review of the permit pursuant to Section 13153.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13150.5. Criteria for Single Family Dwellings.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. New section filed 11–3–78 as an emergency; effective upon filing (Register 78, No. 44).
2. Certificate of Compliance transmitted to OAH 2–26–79 and filed 3–15–79 (Register 79, No. 10).
3. Repealer filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).

§ 13151. Refusal to Grant—Notice to Applicant.

If the executive director determines not to grant an administrative permit based on a properly filed application under this Subchapter, the executive director shall promptly mail written notice to this effect to the applicant with an explanation of the reasons for this determination.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30624, Public Resources Code.

HISTORY

1. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).

§ 13152. Application to Commission.

In situations described in Sections 13147 and 13151 the applicant may proceed to file an application as provided in Section 13056.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30305 and 30624, Public Resources Code.

HISTORY

1. Amendment of section heading and new NOTE filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

Article 4. Reports on Administrative Permits

§ 13153. Reports on Administrative Permits.

The executive director shall report in writing to the commission at each meeting the permits approved under this Subchapter up until the time of the mailing for the meeting, with sufficient description of the work authorized to allow the commission to understand the development proposed to be undertaken. Copies of this report shall be available at the meeting and shall have been mailed to the commission and to all those persons wishing to receive such notification at the time of the regular mailing for the meeting. Any such permits approved following the deadline for the mailing shall be included in the report for the next succeeding meeting. If 1/3 of the appointed membership of the commission so request, the issuance of an administrative permit governed by Public Resources Code Section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a permit application under Subchapter 1 of this chapter, subject to the provisions for hearing and appeal set forth in Subchapters 1 and 2 of the chapter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
3. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
4. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 5. Appeals

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. New Article 5 (Sections 13154 and 13154.5) filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer of Article 5 (Sections 13154 an 13154.5) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 6. Permits

Article 1. Format of Permits

§ 13155. Reference to Regional Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13156. Contents of Permits.

Permits shall be issued in a form signed by the executive director, and shall include:

(a) A statement setting out the reasons for the commission approval of the permit;

(b) Any other language or drawings, in full or incorporated by reference, that are consistent with the decision, and required to clarify or facilitate carrying out the intent of the commission;

(c) Any conditions approved by the commission;

(d) Such standard provisions as shall have been approved by resolution of the commission;

(e) A statement that the permit runs with the land and binds all future owners of the property;

(f) A statement that the permit shall not become effective until the commission receipt of acknowledgment as provided in Section 13158;

(g) The time for commencement of the approved development except that where the commission on original hearing or on appeal has not imposed any specific time for commencement of development pursuant to a permit, the time for commencement shall be two years from the date of the commission vote upon the application. Each permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600, Public Resources Code.

HISTORY

1. Amendment of subsections (a)–(d), (f) and (g) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Amendment of subsections (e) and (g) and amendment of NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 2. Notice of Receipt and Acknowledgment

§ 13158. Notice of Receipt and Acknowledgment.

(a) Development shall not commence until an approved permit becomes effective.

(b) No approved permit shall become effective until a copy of the permit has been returned to the commission, upon which copy all permittees or agent(s) authorized pursuant to section 13053(c) have acknowledged that they have received a copy of the permit and have accepted its contents.

(c) Each permit approved by the commission shall be issued to the applicant with a blank acknowledgment to be signed by each permittee.

(d) The acknowledgment should be returned within ten (10) working days following issuance of the permit.

(e) A permit shall not be issued pursuant to section 13158(c) unless the applicant has satisfied all prior to issuance conditions. Prior to issuance

conditions are those conditions that are identified in the permit as conditions that must be complied with prior to issuance of the permit. After approval of a permit, the executive director shall notify the permit applicant of those conditions that have been designated as prior to issuance conditions.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600 and 30607, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 3. Time for Issuing Permits and Distribution

§ 13160. Issuance of Permits.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13161. Distribution of Permit Copies.

Copies of permits shall be sent to the permittee(s), to the local government with jurisdiction over the area in which the proposed development is to be located and to any person who requires or would be interested in such a copy in the opinion of the executive director. Copies of relevant project plans shall be transmitted to the local government where feasible.

§ 13162. Notice of Permits.

Notice of the commission approval of a permit shall be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(E).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Amendment of section and new NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 4. Disputes over Contents of Permits

§ 13163. Disputes over Contents of Permits.

(a) Any permittee who feels that the permit issued does not correctly embody the action of the commission shall immediately so inform the executive director. Any such questions that cannot be resolved by consultation between the permittee and the executive director shall promptly be referred by the executive director to the commission for decision.

NOTE: Authority and reference cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 5. Amendments to Permits

§ 13164. Applications for Amendments.

Applications for amendments to permits shall be made in writing. Such applications are subject to the requirements for filing and processing permit applications set forth in Subchapter 1 of these regulations.

NOTE: Authority cited: Sections 30333, Public Resources Code. Reference: Sections 30600 and 30620, Public Resources Code.

HISTORY

1. Amendment of section and new NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13165. Amendments to Administrative Permits.

(a) Amendments to administrative permits may be approved by the executive director upon the same criteria and subject to the same reporting requirement and procedures, including public notice and appeals to the commission, as provided for the original issuance of such administrative permits in Sections 13145–13153.

(b) If any proposed amendment would, in the opinion of the executive director, increase the cost of the proposed development to an amount over the amounts specified by Public Resources Code, Section 30624 the application shall thereafter be treated in the manner prescribed by Section 13166.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13166. Amendments to Permits Other Than Administrative Permits.

(a) The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

(1) An applicant may appeal the executive director's determination to the commission. The appeal must be submitted in writing and must set forth the basis for appeal. The appeal must be submitted within 10 working days after the executive director's rejection of the amendment application. If timely submitted, the executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable and shall provide notice of the hearing to all persons the executive director has reason to know may be interested in the application.

(2) If the commission overturns the executive director's determination, the application shall be accepted for processing in accordance with subsection (c) below.

(b) For those applications accepted, if the executive director determines that a proposed amendment has the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline, the amendment shall be deemed a material amendment to the permit. Material amendments shall be processed in accordance with subsection (c) below. If the executive director determines that the proposed amendment is immaterial, notice of such determination including a summary of the procedures set forth in this section shall be posted at the project site and mailed to all persons the executive director has reason to know may be interested in the application.

(1) If no written objection to a notice of immaterial amendment is received at the commission office within ten (10) working days of mailing notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

(2) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the commission at its next regularly scheduled meeting. The executive director shall include a copy of the letter(s) of objection to the commission with the report. If any three (3) commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the commission for action as set forth in subsection (c) below. Otherwise, the immaterial amendment shall become effective.

(3) If a written objection to notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the

immaterial amendment application shall be referred to the commission for action as set forth in subsection (c) below.

(c) If the executive director determines that the proposed amendment is material, the application shall be referred to the commission in accordance with the procedures of Subchapter 1. The commission shall approve the amendment if it finds, by a majority vote of the membership present, that the development as amended conforms with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program if applicable. The commission may approve the amendment subject to reasonable conditions. The decision shall be accompanied by findings in accordance with Section 13096.

(d) The procedures specified in this section shall apply to amendments of permits which were previously approved on the consent calendar unless the commission adopts expedited procedures for amendments to such permits.

(e) The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code Section 30609.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604, 30609 and 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. New subsection (c) filed 6–10–77 as an emergency; effective upon filing (Register 77, No. 24).
3. Certificate of Compliance filed 9–16–77 (Register 77, No. 38).
4. Amendment of subsection (a) filed 4–27–78 as an emergency; effective upon filing (Register 78, No. 17).
5. Certificate of Compliance filed 8–10–78 (Register 78, No. 32).
6. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
7. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
8. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
9. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

§ 13168. Application Fee.

All applications for amendments to permits shall be accompanied by the fee specified in section 13055 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment of section and new NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Article 6. Extension of Permits

§ 13169. Extension of Permits.

(a) Prior to the time that commencement of development under a permit granted by either the regional commission or the commission must occur under the terms of the permit or Section 13156, the applicant may apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The executive director shall not accept the application unless it is accompanied by all of the following:

(1) evidence of an approved, unexpired permit,

(2) evidence of the applicant's legal interest in the property involved in the permit,

(3) the fee specified in section 13055(b)(1) of these regulations, and

(4) stamped envelopes addressed to each person specified in section 13054 of these regulations and each person who testified, orally or in writing at prior permit hearing(s).

(b) For those applications accepted, the executive director shall determine whether there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program, if applicable. If the executive director determines that there are no changed circumstances that may affect consistency of the development, he or she shall mail notice of such determination including a summary of the procedures set forth in this section to all parties the executive director has reason to know may be interested in the application including all persons identified in section 13054 of these regulations and all persons who participated in previous permit hearings. The applicant shall post such notice at the project site within three (3) days of the executive director's mailing of the notice to interested parties. The executive director shall also report the determination to the commission to provide the commission with an opportunity to object to the executive director's determination. The time for commencement of development shall be extended for one year from the expiration date of the permit if both of the following occur:

(1) no written objection to the executive director's determination is received within 10 working days after mailing notice, and

(2) three commissioners do not object to the executive director's determination.

(c) If the executive director received a written objection to his or her determination but concludes that the objection does not identify changed circumstances that may affect the consistency of the development with the Coastal Act or a certified local coastal program, if applicable, the executive director shall report this conclusion to the commission at the same time that the executive director reports the determination to the commission in accordance with subsection (b) above. The executive director shall provide a copy of the letter(s) of objection to the commission with the report. If three commissioners object to the extension on grounds that there may be changed circumstances that affect consistency, the executive director shall schedule the extension for hearing(s) in accordance with subsection (d) below. If three commissioners do not object to the extension, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(d) If the executive director receives an objection to his or her determination and concludes that the objection identifies changed circumstances that may affect the consistency of the development or if the executive director determines that due to changed circumstances the proposed development may not be consistent, the application shall be scheduled for a hearing on whether there are changed circumstances that affect consistency. The executive director shall provide notice of such hearing to any person(s) the executive director has reason to know would be interested in the matter. The executive director shall prepare a report for the hearing that describes any pertinent changes in conditions or circumstances relating to each requested permit extension.

(1) If three (3) commissioners determine that there are changed circumstances that affect consistency of the development with Chapter 3 policies of the Coastal Act or with a certified local coastal program if applicable, the extension shall be denied and upon payment of the filing fee specified in section 13055(a) of these regulations for an application for a coastal development permit the development shall be set for a full hearing of the commission pursuant to Subchapter 1 of these regulations. However, except as otherwise provided in the preceding sentence, the applicant shall not be required to file a new permit application but instead, shall submit any information that the executive director determines is necessary to evaluate the effect of the changed circumstances.

(2) If no such determination is made by three commissioners, the time for commencement of development shall be extended for one year from the expiration date of the permit.

(e) Any extensions applied for prior to the expiration of the permit shall automatically extend the time for commencement of development until such time as the commission has acted upon the extension request; provided, however, that the applicant shall not undertake development during the period of automatic extension provided in this section.

(f) The procedures specified in this section shall apply to extensions of all permits approved by the commission, including those approved on appeal, on the consent calendar and as administrative permits.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600, 30604 and 30620.6, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment filed 6–10–77, effective thirtieth day thereafter (Register 77, No. 24).
4. Amendment of subsection (a) filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
5. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
6. Amendment of section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).
7. Amendment of subsections (a)(3) and (d)(1) filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

Article 7. Transfer of Permits

§ 13170. Transfer of Permits.

(a) Any person may request that the commission records be revised to reflect that he or she has assumed the rights and obligations of a coastal development permit by acquiring property on which development has been approved, initiated, or completed pursuant to a permit by submission of the following:

(1) an affidavit executed by the landowner attesting to the landowner's acknowledgment of the terms and conditions of the permit;

(2) evidence of the landowner's legal interest in the real property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit; and

(3) a copy of the original permit showing that it has not expired.

(b) Upon the executive director's written approval of the documentation submitted, the documentation shall become part of the project file maintained by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment of article heading, section heading, section and NOTE filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Subchapter 7. Enforcement and Violation of Permits

Article 1. Enforcement Responsibilities

§ 13171. Staff Inspection.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13172. Violation of Permits.

Violation of a permit or any term, condition, or provision of a permit is grounds for enforcement under this Section and under Chapter 9 of the California Coastal Act of 1976. Whenever the executive director of the commission determines that a violation of a permit or term, condition, or provision of a permit has occurred or is threatened, the executive director shall refer the matter to the Attorney General for appropriate action. Where such a violation has occurred or is threatened, the Attorney General may file an action in the name of the commission for equitable relief to enjoin such violation of, or for, civil penalties, or both, or may take other appropriate action pursuant to Chapter 9 of the California Coastal Act of 1976.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13173. Enforcement of the Coastal Act.

Whenever the executive director of the commission determines that any violation of the provisions of the California Coastal Act of 1976 has occurred or is threatened, the Attorney General may file an action in the name of the commission for equitable relief to enjoin such violation, or for civil penalties, or both, or may take other appropriate action pursuant to Chapter 9 of the California Coastal Act of 1976.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Chapters 1, 2, 4 and 7 of Division 20, Public Resources Code.

HISTORY

1. New section filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13174. Lawsuits by Regional Commissions.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30334 and 30620, Public Resources Code.

HISTORY

1. New section filed 8–22–77 as an emergency; effective upon filing (Register 77, No. 35).
2. Amendment filed 1–19–78; effective thirtieth day thereafter (Register 78, No. 3).
3. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 8. Procedures for the Issuance of Commission Cease and Desist Orders

§ 13180. Definition.

(a) The term "satisfactory manner" when used to characterize a response to a notice provided in accordance with the requirements of section 30809(b) of the Public Resources Code shall mean a response which is made in the manner and within the timeframe specified in the notice and either:

(1) provides information sufficient to demonstrate to the satisfaction of the executive director that either (A) the activity specified in the notice does not meet the criteria of section 30809(a) of the Public Resources Code or (B) the person(s) to whom the notice was directed is/are not responsible for the activity, or

(2)(A) provides all information concerning the activity requested by the notice, (B) results in an immediate and complete cessation of all work on the project, or portion thereof, specified in the notice, and (C) includes an agreement by the recipient(s) of the notice, followed by actions which fully carry out such agreement, to comply in the manner and within the timeframe specified in the notice with any request to undertake measures for the purpose of preventing irreparable injury to the area in which the activity is located.

(b) The executive director retains discretion over the decision of whether or not to issue a cease and desist order pursuant to section 30809 notwithstanding the submittal of a response to a section 30809(b) notice which may not be fully satisfactory within the meaning of this section.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30809(b), Public Resources Code.

HISTORY

1. New subchapter 8 (sections 13180–13188 and Appendix A) filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

§ 13181. Commencement of Cease and Desist Order Proceeding Before the Commission.

(a) If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in

section 30810(a) of the Public Resources Code with notice of his or her intent to do so. Such notice of intent shall be given either as a provision of a cease and desist order issued pursuant to section 30809 of the Public Resources Code or by separate written communication delivered either (1) by certified mail, (2) by regular mail, receipt of which is confirmed by subsequent oral communication either in person or by telephone, or (3) by hand, and shall include, at minimum, the information specified in sections 13187(a)(4), (5), and (6) together with an explanation of the basis of the executive director's belief that the specified activity meets the criteria of section 30810(a). The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.

(b) The executive director may at his or her discretion extend the time limit for submittal of the statement of defense form imposed by any notice of intent issued pursuant to subsection (a) of this section upon receipt within the time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the executive director identifies to the requesting party as being exempt from the submittal deadline and shall be valid only for such additional time as the executive director allows.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).
2. Amendment of subsection (a) filed 1–12–98; operative 2–11–98 (Register 98, No. 3).

§ 13182. Distribution of Notice of Hearings on Proposed Cease and Desist Order.

At least ten (10) days prior to a hearing on a proposed commission cease and desist order, the executive director shall mail by regular mail a written notice of the date, time, and place of the initial hearing to all alleged violators at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the alleged violator if the alleged violator has already received notice of the hearing in a cease and desist order issued by the executive director.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

§ 13183. Contents of an Executive Director's Recommendation on Proposed Cease and Desist Order.

(a) The executive director shall prepare a recommendation on a proposed commission cease and desist order.

(b) The executive director's recommendation shall be in writing and shall include, at minimum:

(1) a copy of any statement of defense form completed and returned to the Commission by the alleged violator(s) pursuant to section 13181;

(2) a brief summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation investigation, (C) a list of all allegations either admitted or not contested by the alleged violator(s), (D) all defenses and mitigating factors raised by the alleged violator(s), and (E) any rebuttal evidence raised by the staff to matters raised in the alleged violator's assertion of any defense or mitigating factor with references to supporting documents;

(3) a summary and analysis of all unresolved issues;

(4) a statement of (A) whether the executive director has issued a cease and desist order relating to the same activity, and if so (B) its expiration date; and (C) the extent of the alleged violator(s)' compliance therewith;

(5) the proposed text of any cease and desist order that the executive director recommends that the commission issue.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

§ 13184. Distribution of Executive Director's Recommendation.

The executive director's recommendation on a proposed cease and desist order shall be distributed to the alleged violator(s) and otherwise to the persons and in the manner provided in section 13059 of these regulations for application summaries.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).
2. Amendment filed 1–12–98; operative 2–11–98 (Register 98, No. 3).

§ 13185. Procedure for Hearing on Proposed Cease and Desist Order.

A hearing on a proposed cease and desist order shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all alleged violators or their representatives present to identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including (1) any imposition pursuant to subsection (b) of time limits for presentations to be made by the staff, the alleged violator(s), and the public at the hearing and (2) the right of any speaker to propose to the Commission before the close of the hearing any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize its violation investigation and proposed findings with particular attention to issues which remain in controversy;

(d) each alleged violator or its representative may present its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the party(ies). Presentation of evidence which could have been but was not set forth in a statement of defense form pursuant to section 13181 shall be grounds for a determination by the commission, in its discretion, (1) to trail the matter to later in same day or to a later day of the meeting or (2) to continue the matter to a subsequent meeting to give the staff an opportunity to review and respond to the new evidence;

(e) other speakers may speak concerning the matter;

(f) the chair shall close the public hearing after the staff, all alleged violators, and the public have completed their presentations;

(g) commissioners may ask questions, including any question(s) proposed by any speaker under authority granted pursuant to subsection (a), of any speaker at any time during the hearing or deliberations;

(h) the commission shall deliberate and determine, by majority vote of those present and voting, whether to issue a cease and desist order either in the form recommended by the executive director or as amended by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

§ 13186. Evidence Rules.

Presentation and consideration of evidence at a hearing on a proposed cease and desist order shall be governed by the standards set forth in section 13065 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

§ 13187. Contents and Reporting of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the executive director and shall contain at a minimum the following:

(1) a statement of whether the executive director is issuing the order pursuant to section 30809 of the Public Resources Code or the commission is issuing the order pursuant to section 30810 of the Public Resources Code;

(2) if applicable, a statement that the cease and desist order is being issued pursuant to subsection (a)(1), (2), or (3) of section 30809 or 30810 of the Public Resources Code;

(3) in the case of any order issued by the executive director:

(A) a copy of the written notice or confirmation of notice, as the case may be, previously provided pursuant to section 30809(b) of the Public Resources Code to the person(s) to whom the order is directed;

(B) if applicable, notice of the executive director's intent to commence a proceeding for the issuance of a cease and desist order by the commission relating to the same activity, including notice of the date and place of the public hearing to be held as part of such a proceeding if the executive director has scheduled one;

(4) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(5) identification of the property where the activity has been undertaken or may be undertaken;

(6) a description of the activity;

(7) the effective date of the order;

(8) the expiration date, if any, of the order;

(9) any terms, conditions, or other provisions authorized by sections 30809(c) or 30810(b) of the Public Resources Code. Any term or condition that the commission may impose pursuant to section 30810(b) of the Public Resources Code which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred;

(10) in the case of any order issued by the commission, written findings that (A) explain the decision to issue the order and (B) provide the factual and legal basis for the issuance of the order;

(11) notice that any person to whom the order is directed may seek from the superior court a stay of the order pursuant to section 30803(b) of the Public Resources Code.

(12) a statement of the obligation of the person(s) subject to the order to conform strictly to its terms and the consequences specified in section 30821.6 of the Public Resources Code of the failure to do so.

(b) The executive director shall report to the commission any cease and desist order he or she (1) issues and serves as provided in section 30809(d) of the Public Resources Code, or (2) modifies or rescinds as provided in section 13188(a), at the commission's next regularly scheduled meeting after any such action.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30803(b), 30809, 30810 and 30821.6, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).
2. Amendment of subsection (a)(2), repealer of subsection (a)(3)(B), subsection relettering, and amendment of NOTE filed 1–12–98; operative 2–11–98 (Register 98, No. 3).

§ 13188. Rescission or Modification of Cease and Desist Orders.

(a) The executive director may rescind or modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in section 30809(e) of the Public Resources Code unless the person(s) subject to the order stipulate(s) in writing to the extension. The executive director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation. In connection with the issuance of any such consecutive cease and desist order the executive director shall issue a statement explaining the circumstances which in his or her opinion justify issuance of such an order.

(b) The commission, after public hearing, may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by (1) any person to whom the cease and desist order is directed, (2) the executive director or (3) any two members of the commission. A person to whom a cease and desist order is directed may commence a proceeding for the purpose of rescinding or modifying that cease and desist order only where the person demonstrates to the satisfaction of the executive director that there has been a material change in the facts upon which the order was issued. Upon receipt of a request pursuant to this subsection (b) for rescission or modification of a cease and desist order issued by the Commission, a hearing on the request shall be held at the next regularly scheduled meeting or as soon thereafter as is practicable after notice to all persons subject to the order or whom the executive director otherwise has reason to know would be interested in the matter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30809 and 30810, Public Resources Code.

HISTORY

1. New section filed 8–4–92; operative 9–3–92 (Register 92, No. 32).
2. Amendment of subsection (b) filed 1–12–98; operative 2–11–98 (Register 98, No. 3).

[The next page is 608.3.]

Appendix A

Statement of Defense Form

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIALED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form as fully and accurately as you can and as quickly as you can and return it no later than _____ to the commission's enforcement staff at the following address:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact as soon as possible _____ of the commission enforcement staff at telephone number 415–904–5200.

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):

_____

_____

_____

_____

_____

_____

2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to the paragraph number in such document):

3. Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in such document):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) cop(y/ies) if you can):

5. Any other information, statement, etc. that you want to offer or make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title and enclose a copy with this completed form):

_____

_____

_____

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_____

HISTORY

1. New Appendix A filed 8–4–92; operative 9–3–92 (Register 92, No. 32).

Subchapter 9. Procedures for the Issuance of Restoration Orders

§ 13190. Definition.

The elements of the term "continuing resource damage," as such term is used in section 30811 of the Public Resources Code, shall have the following meanings:

(a) "Resource" means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

(b) "Damage" means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

(c) "Continuing," when used to describe "resource damage," means such damage which continues to occur as of the date of issuance of the restoration order.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New subchapter 9 (sections 13190–13197) and section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13191. Commencement of Restoration Order Proceeding Before the Commission.

(a) If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a restoration order proceeding before the commission by providing any person whom he or she believes to have engaged in development activity as described in section 30811 of the Public Resources Code with notice of his or her intent to do so. Such notice of intent shall be given either as a provision of a staff report prepared pursuant to sections 13057 and/or 13075 of these regulations or by separate written communication delivered either (1) by certified mail, (2) by regular mail receipt of which is confirmed by subsequent oral communication either in person or by telephone, or (3) by hand, and shall include, at minimum, the information specified in sections 13196(a), (b), and (c) together with an explanation of the basis of the executive director's belief that the specified activity meets the criteria of section 30811. The notice of intent shall be accompanied by a "statement of defense form" that conforms to the format attached as Appendix A to Subchapter 8 of these regulations. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.

(b) The executive director may at his or her discretion extend the time limit for submittal of the statement of defense form imposed by any notice of intent issued pursuant to subsection (a) of this section upon receipt within the time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the executive director identifies to the requesting party as being exempt from the submittal deadline and shall be valid only for such additional time as the executive director allows.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13192. Distribution of Notice of Hearings on Proposed Restoration Order.

At least ten (10) days prior to a hearing on a proposed restoration order, the executive director shall mail by regular mail a written notice of the date, time, and place of the initial hearing to all alleged violators at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the alleged violator if the alleged violator has already received notice of the hearing in a staff report prepared by the executive director.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13193. Contents of an Executive Director's Recommendation on Proposed Restoration Order.

(a) The executive director shall prepare a recommendation on a proposed restoration order.

(b) The executive director's recommendation shall be in writing and shall include, at minimum:

(1) a copy of any statement of defense form completed and returned to the Commission by the alleged violator(s) pursuant to section 13191;

(2) a brief summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation investigation, (C) a list of all allegations either admitted or not contested by the alleged violator(s), (D) all defenses and mitigating factors raised by the alleged violator(s), and (E) any rebuttal evidence raised by the staff to matters raised in the alleged violator's assertion of any defense or mitigating factor with references to supporting documents;

(3) a summary and analysis of all unresolved issues;

(4) the proposed text of any restoration order that the executive director recommends that the commission issue.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13194. Distribution of Executive Director's Recommendation.

The executive director's recommendation on a proposed restoration order shall be distributed to the alleged violator(s) and otherwise to the persons and in the manner provided in section 13059 of these regulations for application summaries.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13195. Procedure for Hearing on Proposed Restoration Order.

A hearing on a proposed restoration order shall proceed in the manner and in accordance with the rules of evidence specified in sections 13185 and 13186 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13196. Contents of Restoration Orders.

Restoration orders shall be signed by the executive director and shall contain at a minimum the following:

(a) the names of the person or persons who have undertaken the activity that is the subject of the order;

(b) identification of the property where the activity has been undertaken;

(c) a description of the activity;

(d) the effective date of the order;

(e) any terms, conditions, or other provisions authorized by section 30811 of the Public Resources Code. Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred;

(f) written findings that (A) explain the decision to issue the order and (B) provide the factual and legal basis for the issuance of the order;

(g) a statement of the obligation of the person(s) subject to the order to conform strictly to its terms and the consequences specified in section 30821.6 of the Public Resources Code of the failure to do so.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

§ 13197. Rescission or Modification of Restoration Orders.

The commission, after public hearing, may rescind or modify a restoration order that it has issued. A proceeding for such a purpose may be commenced by (a) any person to whom the restoration order is directed, (b) the executive director or (c) any two members of the commission. A person described in subsection (a) may commence a proceeding for the purpose of rescinding or modifying a restoration order only where the person demonstrates to the satisfaction of the executive director that there has been a material change in the facts upon which the order was issued. Upon receipt of a request pursuant to this section for rescission or modification of a restoration order, a hearing on the request shall be held at the next regularly scheduled meeting or as soon thereafter as is practicable after notice to all persons subject to the order or whom the executive director otherwise has reason to know would be interested in the matter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30811, Public Resources Code.

HISTORY

1. New section filed 1–7–98; operative 2–6–98 (Register 98, No. 2).

Chapter 6. Exclusions from Permit Requirements

Subchapter 1. Claims of Vested Rights

§ 13200. Scope.

Any person claiming a vested right in a development and who wishes to be exempt from the permit requirements of the Act pursuant to Public Resources Code Section 30608 must substantiate the claim in a proceeding before the Commission under this subchapter. In such a proceeding the claimant shall assume the burden of proof.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 1. Review Provisions

§ 13201. Obligation to File.

Any person who claims that a development is exempt from the permit requirements of Public Resources Code, Section 30600 or 30601 by reason of a vested right under Public Resources Code, Section 30608 must file a claim of vested rights with the commission and obtain approval under this subchapter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13202. Claim Forms.

Claim of vested rights forms shall be published by the commission. The executive director of the commission shall revise the form as necessary to assist claimants in providing the information necessary to substantiate a claim, provided, however, that any significant change in the type of information requested must be approved by the commission. A claim of vested rights shall be filed only after the claimant has provided the commission with all the information called for by the form, as well as any other information which the executive director of the commission deems necessary to review the claim. In no event shall a claim of vested rights be deemed filed until after the passage of five (5) working days from the date it is received by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30305 and 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
3. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13203. Initial Determination.

As soon as practicable after the filing of a claim, and in no event later than 30 days from the filing date, the executive director of the commission shall make an initial determination whether the claim of vested rights appears to be substantiated; notice of the initial determination shall be transmitted to the claimant and to any person(s) requesting notice or known by the executive director to be interested. Based on that initial determination, the executive director shall make a written recommendation to the commission for consideration at the hearing on the claim of vested rights application at the next succeeding regularly scheduled meeting. At such hearing, the executive director shall introduce into evidence all evidence submitted by the applicant and all evidence submitted either supporting or in opposition to the application up to the deadline for submission of evidence established by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

[The next page is 609.]

§ 13204. Notice.

Notice of the recommendation and the date of the public hearing on the claim shall be made in the manner prescribed by Section 13059.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13205. Acknowledgment Hearing Procedure.

(a) Commission action on a claim of vested rights shall be supported by written findings of fact. If the commission finds that a claim of vested rights is substantiated, it shall acknowledge the claim. If it finds that a claim is not substantiated, it shall deny the claim. However, if the circumstances suggest that a claimant may be able to provide additional information to substantiate the claim or that other evidence is pertinent to the claim, the matter may be continued for the purpose of submitting further evidence and for action at the next succeeding meeting following the receipt and review of the information.

(b) Claims which the executive director recommends be acknowledged may be placed on a consent calendar and processed in the manner provided by Sections 13101 and 13103.

(c) All other claims shall be processed in the manner provided by Sections 13080–13096.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (a) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13206. Appeal to the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 2. Grant of Claim

§ 13207. Effect of Vested Right.

A final determination of the commission recognizing a claim of vested rights shall constitute acknowledgment that the development does not require a coastal development permit under Public Resources Code, Section 30600 or 30601 provided that no substantial change may be made in the development except in accordance with the permit requirements of the California Coastal Act of 1976. If the approvals upon which the acknowledgment is based lapse either by their own terms or pursuant to any provision of law, the acknowledgment made under this subchapter shall no longer be in effect and the development shall become subject to the permit requirements of the California Coastal Act of 1976.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13208. Notification to Local Government.

As soon as practicable after final action on a claim of vested rights by the commission the executive director shall transmit a notice of the action taken to the local government having jurisdiction over the area in which the development is located, to the claimant and to any person known by the executive director to be interested in the matter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 2. Vested Rights Under the California Coastal Zone Conservation Act of 1972

NOTE: Authority cited: Section 30333, Public Resources Code.

HISTORY

1. Repealer of Subchapter 2 (Section 13210) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33). For prior history, see Register 77, No. 24.

Subchapter 3. Permits Approved by the California Coastal Zone Conservation Commission Prior to January 1, 1977

§ 13211. Effect of Permit Granted Under the California Coastal Zone Conservation Act of 1972.

NOTE: Authority cited: Section 30333, Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13212. Amendment of Recorded Conditions in 1972 Act Permits.

NOTE: Authority cited: Section 30333, Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13213. Extension of Permits Granted Under the 1972 Act.

(a) The time limits for commencement of construction under a permit granted under the California Coastal Zone Conservation Act of 1972 shall be determined from the regulations of the California Coastal Zone Conservation Commission in effect on December 31, 1976 or by any specific actions taken pursuant to the California Coastal Zone Conservation Act of 1972, if not expressly stated in the terms and conditions of the permit.

(b) Prior to the time that commencement of construction under a permit granted by either the regional commission or the commission must occur under the terms of subsection (a) the applicant may, upon payment of a $50 fee (or a $25 fee in the case of extension of permit for single–family residences) apply to the executive director of the commission for an extension of time not to exceed an additional one year period. The application shall be accompanied by evidence of a valid, unexpired permit, acknowledged pursuant to the requirements in effect at the time the permit was issued, and of the applicant's continued legal interest in the property involved in the permit. The application shall be processed in accordance with the procedures of Section 13169.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 3.5. Development on Parcels Added to the Coastal Zone on January 1, 1980

Article 1. Review Provisions

§ 13214. Scope.

Any person claiming a development to be exempt from the permit requirements of the Act pursuant to Public Resources Code Section

30608.5 must substantiate the claim in a proceeding under this subchapter. In such a proceeding the claimant shall assume the burden of proof.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. New subchapter 3.5 (Sections 13214–13214.8) filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).

§ 13214.1. Obligation to File.

Any person who claims that a development is exempt from the permit requirements of the Public Resources Code, Section 30600 or 30601 pursuant to Public Resources Code, Section 30608.5 must file a claim with the commission and obtain approval under this subchapter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13214.2. Claim Forms.

Claim forms shall be published by the commission. The executive director of the commission shall revise the form as necessary to assist claimants in providing the information necessary to substantiate a claim, provided, however, that any significant change in the type of information requested must be approved by the commission. A claim shall be filed only after the claimant has provided the commission with all the information called for by the form, as well as any other information which the executive director of the commission deems necessary to review the claim.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13214.3. Initial Determination.

As soon as practicable after the filing of a claim, and in no event later than 30 days from the filing date, the executive director of the commission shall make an initial determination whether the claim appears to be substantiated; notice of the initial determination shall be transmitted to the claimant and to any person(s) requesting notice or known by the executive director to be interested. Based on the initial determination, the executive director shall make a written recommendation to the commission for consideration at the hearing on the claim application at the next succeeding regularly scheduled meeting. At such hearing the executive director shall introduce into evidence all information submitted by the applicant or other interested parties either supporting or in opposition to the application up to the deadline for submission of evidence established by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13214.4. Notice.

Notice of the recommendation and the date the public hearing on the claim shall be made in the manner prescribed by Section 13059.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

§ 13214.5. Acknowledgment Hearing Procedure.

(a) Commission action on a claim shall be supported by written finding of facts. If the commission finds that a claim is substantiated, it shall acknowledge the claim. If it finds that a claim is not substantiated, it shall deny the claim. However, if the circumstances suggest that a claimant may be able to provide additional information to substantiate the claim or that other evidence is pertinent to the claim, the matter may be continued for the purpose of submitting further information and for action at the next succeeding meeting following the receipt and review of the information.

(b) Claims which the executive director recommends be acknowledged may be placed on a consent calendar and processed in the manner provided by Sections 13101 and 13103.

(c) All other claims shall be processed in the manner provided by Sections 13080–13096.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13214.6. Appeal to the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 2. Grant of Claim

§ 13214.7. Effect of Acknowledged Claim.

A final determination of the commission recognizing a claim pursuant to Public Resources Code Section 30608.5 exists shall constitute acknowledgment that the development does not require a coastal development permit under Public Resources Code, Section 30600 or 30601 provided that this shall only apply to developments actually completed or where substantial work has been undertaken prior to July 1, 1981.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13214.8. Notification to Local Government.

As soon as practicable after final action on a claim by the commission, the executive director shall transmit a notice of the action taken to the local government having jurisdiction over the area in which the development is located, the claimant, and to any person known by the executive director to be interested in the matter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30608.5, Public Resources Code.

Subchapter 4. Urban Land Exclusion

Article 1. Commission Review Procedures

§ 13215. Urban Land Exclusion.

The provisions of this subchapter shall govern the exclusion of any urban land area from the provisions of Chapter 7 of the California Coastal Act of 1976 pursuant to Public Resources Code, Section 30610.5.

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Section 30610.5, Public Resources Code.

HISTORY

1. New Subchapter 4 (Sections 13215–13234, not consecutive) filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment of NOTE filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13216. Local Government Request.

A local government may request, in writing, that an urban land area be excluded by the commission from the permit provisions of the California Coastal Act of 1976. The request for exclusion shall include, or be accompanied by the following:

(a) A description specifically identifying the land area for which the exclusion is requested.

(b) Information describing the zoning in effect on January 1, 1977.

(c) A description or statement as to the density of the development existing on or before January 1, 1977.

(d) A description of any existing or proposed regulatory or other controls on development within the area which will insure that any future development will be infilling or replacement and will be in conformity with the scale, size, and character of the surrounding community and that any locally permitted development will have no potential for significant adverse effects, either individually or cumulatively on public access to the coast or on coastal resources.

(e) Information as to the number of lots within the area requested for exclusion and the number of lots which are built upon to the same general density or intensity of use.

§ 13217. Material Supporting Request for Exclusion.

The request for exclusion shall contain or be accompanied by the following supporting material:

(a) The precise language of existing regulatory or other controls on development within the area requested for exclusion that would insure that any development within said area, either individually or cumulatively, would meet the criteria of Public Resources Code Section 30610.5; or proposed regulatory or other controls on development within the area requested for exclusion that the local government intends to adopt and enforce in order to assure that any development within said area, either individually or cumulatively, would meet the criteria of Public Resources Code 30610.5; or any combination of the above. The description of regulatory controls may include any land use controls such as height limits or open space requirements that could affect allowable density, height or nature of uses.

(b) A general description of existing development within the area to be excluded, the amount of privately–owned net acreage to be excluded, and the resulting density (units per acre).

(c) A reasonable estimate of the most intense development that could occur, based on the regulatory controls of the proposed exclusion. This estimate may utilize any combination of geographic units deemed appropriate by the local government and may include an analysis of the likely effects of regulatory controls such as height limits, off–street parking requirements, floor area ratio, etc.

(d) An analysis of the effects of the development projected in subdivision (c) above on public access to the coast and on coastal resources.

(e) Any other information as may from time to time be requested by the executive director of the commission or by the commission to determine whether and on what terms and conditions, if any, such area may be excluded pursuant to Public Resources Code, Section 30610.5.

§ 13218. Preliminary Review of Exclusion Request.

Any local government desiring the exclusion of any urban land area within its jurisdiction, pursuant to Public Resources Code Section 30610.5, may request a preliminary advisory review of the proposed exclusion by the commission. Because the purpose of the preliminary review is to provide sufficiently detailed information to make the determinations required in Public Resources Code Section 30610.5, the exclusion request need not be in the final language required of an adopted ordinance. The commission will grant a request for a preliminary advisory review as time allows, provided such review will not adversely limit commission time required for the review of other agenda items. Any such advisory review shall be conducted at a properly noticed public hearing of the commission. The chairperson shall establish predetermined time limits for testimony by the local government and interested persons. Individual members of the commission may ask questions and make statements but no vote shall be taken.

§ 13219. Submission and Filing of Requests and Supporting Material.

The executive director of the commission shall determine whether the request and supporting materials provide sufficient information to permit evaluation of the request pursuant to Public Resources Code Section 30610.5. These determinations shall be made by the executive director within five (5) working days after the material is received. If it is determined that the material is legally sufficient and technically complete, the request for exclusion shall be filed and the requesting local government shall be informed of the filing. If the executive director determines that the material is not sufficient, the executive director shall provide the requesting local government with a statement of the reasons why the request was not filed. Upon curing any defects, the requesting local government may resubmit the request for exclusion. Any local government submitting an application for exclusion may also request a determination from the commission as to the adequacy of the material that it has submitted for purposes of conducting the review of the urban exclusion request pursuant to Public Resources Code, Section 30610.5.

§ 13220. Commission Review of Request.

The request for exclusion shall be scheduled for public hearing before the commission no later than 49 days after being filed unless the local government requests the executive director's approval of additional time to supplement a request for exclusion. The executive director of the commission shall prepare a report for the commission summarizing the nature and effects of the request. The report shall be prepared and distributed in the same manner as an application summary, as provided in Sections 13057 and 13059 but shall deal only with those issues raised by the requirements of Public Resources Code, Section 30610.5. Notice of the hearing shall be provided in the manner set forth in Section 13016. Oral hearing procedures shall be those set forth in Sections 13064–13068.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610.5, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13221. Commission Action on Request.

(a) If the staff report contained an initial staff recommendation, the commission may, at its discretion, vote on the request at the same meeting following the conclusion of the public hearing in the same manner as provided in Sections 13081–13083.

(b) If the staff report did not contain an initial recommendation, the executive director shall prepare a written recommendation on the request for exclusion after the close of the public hearing. The executive director's staff recommendation shall be prepared and distributed as provided in Sections 13075 and 13076 but the proposed action, findings, and conditions shall be stated only in terms of the requirements of Public Resources Code, Section 30610.5. The commission shall act on the request for exclusion, approving or denying it in whole or in part, at the next regularly scheduled meeting following completion of the public hearing, unless the commission finds that good cause exists for continuing its action to a later time.

§ 13222. Effective Date of Urban Exclusion.

No urban exclusion approved by the commission shall be effective until the following occur:

(a) The requesting local government, by action of its governing body, acknowledges receipt of the commission's resolution of approval including any conditions which may have been required pursuant to Public Resources Code, Section 30610.5 and

(b) The requesting local government, by appropriate action of its governing body, accepts and agrees to the terms and conditions, if any, to which the urban exclusion has been made subject and takes final action to implement all such conditions.

§ 13223. Denial of Request for Exclusion.

If the commission denies a request for exclusion it shall adopt a resolution indicating the reasons for such denial, and shall transmit the resolution to the requesting local government. Following such denial, a new request for exclusion of the same area may be filed with the commission after the expiration of three (3) months from the date of the commission's action, provided that the local government submits information indicating the reasons for denial have been overcome in the new request.

§ 13224. Termination of Final Request.

The local government may at any time terminate the request for exclusion and such termination shall void the order granting the exclusion and reinstate the development controls of the California Coastal Act of 1976. Upon termination of the request, no new request for an exclusion of the same area may be filed with the commission for three (3) months from the date of termination.

§ 13225. Amendments to Order Granting Exclusion.

The local government may request amendments to the order granting exclusion and shall file such requests with the commission. Amendments that do not result in a significant change affecting the requirements of Public Resources Code, Section 30610.5(b) may be approved by the executive director of the commission and shall be reported to the commission at the next regularly scheduled meeting of the commission for which notice can be provided pursuant to Section 13220. The findings of the executive director shall be conclusive unless three (3) or more commissioners, following any public comment on the proposed amendments request to review the determination of whether the proposed amendment would constitute a significant change. Upon such a request by three (3) or more commissioners, the commission shall determine whether the amendment would result in a significant change in density, height or nature of uses in the excluded area. If the amendment is determined not to be substantial, the amendment shall be deemed approved and shall immediately be incorporated in the original order granting the exclusion. An amendment found to be substantial shall, at the option of the local government, be treated in the same manner as a new request to exclude an urban area or as a request for a categorical exclusion pursuant to Sections 13240–13249.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610.5, Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 2. Environmental Impact Review Pursuant to the California Environmental Quality Act

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code.

HISTORY

1. Repealer of Article 2 (Sections 13226–13229) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33). For prior history, see Register 77, No. 24.

Article 3. Implementation of Urban Exclusion Order

§ 13230. Effect of an Order Granting Exclusion.

An order granting exclusion removes the area in question from the provisions of Chapter 7 of the California Coastal Act of 1976, from the effective date of the exclusion order until the certification of a local coastal program or January 1, 1981, whichever is earlier and therefore no permit application otherwise requiring a local government permit for the proposed development activity shall be filed for such an area with the commission. No development inconsistent with such order may take place unless the order is amended or terminated as provided in this Subchapter.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610.5, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81;effective thirtieth day thereafter (Register 81, No. 33).

§ 13231. Interpretation of Exclusion.

Any person may request an interpretation of the order granting an exclusion from the executive director of the commission. The executive director shall, as soon as time and resources allow, make such interpretation; such interpretation shall be reviewed by the commission at its next regularly scheduled meeting for which notice can be provided pursuant to Section 13220. The decision of the executive director shall be conclusive unless three (3) or more members of the commission request to review the interpretation, in which case the commission shall make the interpretation by majority vote of the appointed membership. The affected local government shall be notified of any such interpretation. The commission will review any interpretation of the executive director if requested by the affected local government.

Article 4. Relationship to Local Coastal Program

§ 13234. Termination upon Adoption of Local Coastal Program.

Upon the effective date of the delegation of development review authority to a local government pursuant to Public Resources Code, Section 30519, an urban exclusion order shall automatically be deemed terminated for that portion of the urban exclusion land area included in the approved local coastal program. Any permit granted pursuant to an exclusion order shall remain in effect, provided that no substantial change is made in the development plan previously approved and all necessary governmental approvals remain in effect.

§ 13235. Applicability of an Exclusion to the Local Coastal Program.

The circumstances, provisions, terms conditions, etc., related to an urban exclusion shall not prejudice the certification or denial of certification of the Local Coastal Program by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610.5, Public Resources Code.

HISTORY

1. New section filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 4.5. Waiver of Permit Requirements for De Minimis Development

§ 13238. Scope of Subchapter.

This subchapter governs procedures to process waivers from permit requirements for de minimis projects pursuant to Public Resources Code Section 30624.7.

NOTE: Authority cited: Sections 30333 and 30624.7, Public Resources Code. Reference: Section 30624.7, Public Resources Code.

HISTORY

1. New Subchapter 4.5 (Sections 13238 and 13238.1–13238.3) filed 4–14–82 as an emergency; effective upon filing (Register 82, No. 17).
2. Order of Repeal of 4–14–82 emergency order filed 4–21–82 by OAL pursuant to Government Code Section 11349.6 (Register 82, No. 17).
3. New Subchapter 4.5 (Sections 13238 and 13238.1–13238.2) filed 8–25–82; effective upon filing pursuant to Government Code Section 11346.2(d).

§ 13238.1. Application.

The executive director may issue a waiver from permit requirements after review of a completed permit application. If, upon review of the application, the executive director determines that the permit requirements may be waived, the applicant shall post public notice as required by Section 13054(b), and shall provide any additional notice to the public that the executive director deems appropriate. The executive director shall notify any person known to be interested in the proposed development of the proposed waiver.

NOTE: Authority cited: Sections 30333 and 30624.7, Public Resources Code. Reference: Section 30624.7, Public Resources Code.

§ 13238.2. Report to the Commission.

The executive director shall report to the Commission those projects for which waivers have been issued under this subchapter, with sufficient description to give notice of the proposed development to the Commission. A list of waivers issued by the executive director shall be available for public inspection at the meeting during which the waivers will be reported. Any waivers issued by the executive director shall be included in the report for the next meeting. If, pursuant to Public Resources Code Section 30624.7, the Commission requests that the waiver not be effective, the applicant shall be advised that a coastal permit is required if the applicant wishes to proceed with the development.

NOTE: Authority cited: Sections 30333 and 30624.7, Public Resources Code. Reference: Section 30624.7, Public Resources Code.

Subchapter 5. Categorical Exclusions

§ 13240. Categorical Exclusions.

The provisions of this Subchapter shall govern the procedure of the commission in considering the exclusion of any category of development or any category of development within a specifically defined geographic area from the coastal development permit requirements of Chapter 7 of the California Coastal Act of 1976 (commencing with Section 30600) pursuant to Public Resources Code, Section 30610(e).

NOTE: Authority cited: Sections 30331 and 30333, Public Resources Code. Reference: Section 30610(e), Public Resources Code.

HISTORY

1. New Subchapter 5 (Sections 13240–13249, not consecutive) filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 10).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 1. Commission Review Procedures

§ 13241. Request for Exclusion.

(a) In the case of a local government or other public agency requesting that a category of development or categories of development within a specific geographic area be excluded from the coastal development permit requirements of Chapter 7 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30600), such agency shall provide the executive director of the commission with materials and information that the executive director deems necessary to make the findings required by Public Resources Code, Section 30610(e) and 30610.5(b) and the California Environmental Quality Act (commencing with Public Resources Code Section 21000). The executive director shall cause a public hearing on such a request to be scheduled within a reasonable time of the receipt of materials and information sufficient to allow him to evaluate whether the request for exclusion meets the requirements of Public Resources Code, Sections 30610(e) and 30610.5(b).

(b) In the case of a request by a person not representing a public agency, the executive director shall review proposed requests for categorical exclusions and submit for commission review only those requests that appear to meet the requirements of Public Resources Code, Sections 30610(e) and 30610.5(b).

(c) Commission requests shall be reviewed in the same manner as provided in subsection (a) above.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(e), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13242. Hearing Procedures.

The executive director of the commission, after consultation with the public agency that approves development activity for the particular category of development proposed for exclusion with any affected local government and with any persons known to be interested in the development activity, shall prepare and distribute a report in the same manner provided in Section 13220. If the commission determines after the public hearing is closed that the proposed categorical exclusion warrants commission action, the executive director shall prepare a recommendation in the same manner as provided in Section 13221.

§ 13243. Commission Action on Order Granting Exclusion.

The commission shall, by a two–thirds (2/3) vote of its appointed members, exclude those categories of development or categories of development within specific geographic areas that it finds meet the criteria of Public Resources Code, Section 30610(e); the commission shall require such terms and conditions as it deems necessary pursuant to Public Resources Code, Section 30610.5(b). The commission's order granting the exclusion shall contain the following:

(a) A precise description of the category of development or category of development within a specific geographic area that is the subject of the exclusion in sufficient detail to permit any person to know precisely which category of development within a specific geographic area does not require a coastal development permit pursuant to Chapter 7 of the California Coastal Act of 1976;

(b) Specific findings supporting such determination to grant the exclusion as required by Public Resources Code Section 30610(e).

(c) Any terms and conditions necessary to comply with the requirements of Section 30610.5(b). Such terms and conditions may also specify that certain categories of development or categories of development within a specific geographic area may be excluded only on a condition that local government development approvals are reviewable by the commission in the same manner as provided in Sections 13318–13323.

(d) Any category of development for which the commission shall receive notice of public agency approval.

(e) A declaration that the exclusion may be rescinded at any time, in whole or in part, if the commission finds by a majority vote of its appointed membership after public hearing that the terms and conditions of the exclusion order no longer support the findings specified in Public Resources Code, Section 30610(e) and that the order may be revoked at any time that the terms and conditions of the order are violated as provided in Public Resources Code, Section 30610.5.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(e), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13244. Order Granting Exclusion.

Upon adoption of an order granting an exclusion pursuant to this article, the commission shall transmit copies of such order to each applicable local government or other public agency affected by the exclusion order. No categorical exclusion approved by the commission shall be effective until the following occur:

(a) The public agency which issues the permit for the category of development that is the subject of the categorical exclusion order, by action of its governing body, acknowledges receipt of the commission's resolution of approval, including any conditions which may have been required pursuant to Public Resources Code Section 30610.5;

(b) The agency described in subsection (a) above, by appropriate action of its governing body, accepts and agrees to the terms and conditions to which the categorical exclusion has been made subject; and

(c) The executive director of the commission determines in writing that the public agency's resolution is legally adequate to carry out the exclusion order and that the notification procedures satisfy the requirements of the exclusion order.

The approval of any category of development excluded on condition that the commission shall have the right to review any such development shall be conditioned on the requirement that the public agency permit

shall not become effective for twenty (20) working days following commission receipt of notification as provided in Section 13243 (c) and (d).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(e), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 31).

§ 13244.1. Adopted Categorical Exclusions.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30610(d) and 30610.5(a) and (b), Public Resources Code.

HISTORY

1. New subsection (q) filed 2–8–78; effective thirtieth day thereafter (Register 78, No. 6). For prior history, see Register 77, No. 50.
2. New subsection (r) filed 2–28–78; effective thirtieth day thereafter (Register 78, No. 9).
3. New subsection (s) filed 4–11–78; effective thirtieth day thereafter (Register 78, No. 15).
4. New subsection (t) filed 6–27–78; effective thirtieth day thereafter (Register 78, No. 26).
5. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13245. Interpretation, Amendment or Termination of Exclusion Order.

An interpretation of a categorical exclusion order may be requested in the same manner provided in Section 13231. A request for amendment to a categorical exclusion order shall be reviewed in the same manner provided in Section 13225, provided that approval of a proposed amendment shall be by two–thirds (2/3) vote of the appointed membership. A public agency may request that a categorical exclusion order be terminated in the manner provided in Section 13224.

Article 2. Implementation of Categorical Exclusion Order

§ 13247. Effect of a Categorical Exclusion Order.

An order granting an exclusion for a category of development removes that category of development from the permit requirements of Chapter 7 of the California Coastal Act of 1976 to the extent and in the manner specifically provided in the exclusion order. No development inconsistent with such order may take place unless the order is amended or terminated as provided in this subchapter or a final coastal development permit is issued.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13248. Notification of Development Approvals.

Any public agency issuing a development permit for any excluded category of development or category of development within a specific geographic area for which notification requirements are specified in the commission's exclusion order shall notify the commission of such development approval in the same manner as required in Section 13315.

§ 13249. Termination of Order Granting Exclusion.

The commission may revoke an order granting a categorical exclusion at any time after public hearing as set forth below:

(a) If the executive director or any two (2) members of the commission determine that development inconsistent with the exclusion order has been permitted and that corrective measures other than revocation have not been or may not be effective, the executive director shall cause to have scheduled a public hearing to be conducted in the manner provided in Section 13243. If the commission determines after public hearing that the conditions of exclusion have been violated, it may by a majority vote of its authorized membership, revoke the exclusion order and reinstate the permit requirements of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30600) as of the date of the commission's decision to revoke the exclusion order. The procedures for rescission of an exclusion order shall be the same except that the commission must find that the terms and conclusions of the exclusion order no longer support the findings required by Public Resources Code, Section 30610(e).

(b) Upon the effective date of the delegation of development review authority to a local government pursuant to Public Resources Code, Section 30519, a categorical exclusion order shall automatically be deemed terminated for any category of development included in the geographic area of the approved local coastal program.

(c) At the time of the termination of an exclusion order pursuant to subsection (a) above, the commission shall indicate any prior permits approved during the term of the exclusion order that will require coastal commission permit review pursuant to these regulations. Any permit approved prior to the termination of an exclusion order pursuant to subsection (b) above shall remain in effect, provided that no substantial change is made in the development plans previously approved and all necessary governmental approvals remain in effect.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(e), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Subchapter 6. Existing Single–Family Residences

§ 13250. Improvements to Existing Single–Family Residences.

(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single–family residential building, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to a residence;

(2) Structures on the property normally associated with a single–family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self–contained residential units; and

(3) Landscaping on the lot.

(b) Pursuant to Public Resources Code Section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

(1) Improvements to a single–family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff.

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non–attached structure such as garages, fences, shoreline protective works or docks.

(5) In areas which the commission or a regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including

but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

(6) Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

(c) In any particular case, even though an improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed improvement shall not be undertaken without a permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(a), Public Resources Code.

HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (b)(4) filed 8-24-77; effective thirtieth day thereafter (Register 77, No. 35).
3. Amendment of subsection (a)(5) filed 5-29-79; effective thirtieth day thereafter (Register 79, No. 22).
4. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
5. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
6. Amendment of subsection (b)(1) filed 7-24-80; effective thirtieth day thereafter (Register 80, No. 30).
7. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
8. Amendment of subsection (c) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
9. Amendment of section heading and section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

Subchapter 7. Repair and Maintenance Activities That Require a Permit

§ 13252. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code Section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(c) Notwithstanding the above provisions, the executive director of the commission shall have the discretion to exempt from this section ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation road ways.

(d) Pursuant to this section, the commission may issue a permit for ongoing maintenance activities for a term in excess of the two year term provided by these regulations.

(e) In any particular case, even though a method of repair and maintenance is identified in subsection (a) above, the executive director may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed repair and maintenance shall not be undertaken without a permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(d), Public Resources Code.

HISTORY

1. New Subchapter 7 (Section 13252) filed 6-29-78 as an emergency; effective upon filing (Register 78, No. 26).
2. Amendment of subsection (a)(4) and new subsections (c) and (d) filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).
3. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
4. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
5. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
6. Amendment of subsections (c) and (d) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

7. Amendment of subsections (a)(1)(D), (a)(3)(B) and (b) and new subsection (e) filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Subchapter 7.5. Improvements to Structures, Other than Single–Family Residences and Public Works Facilities That Require Permits

§ 13253. Improvements That Require Permits.

(a) For purposes of Public Resources Code Section 30610(b) where there is an existing structure, other than a single–family residence or public works facility, the following shall be considered a part of that structure:

(1) All fixtures and other structures directly attached to the structure.

(2) Landscaping on the lot.

(b) Pursuant to Public Resources Code Section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

(1) Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; in an area designated as highly scenic in a certified land use plan; or within 50 feet of the edge of a coastal bluff;

(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, in a highly scenic area, or in an environmentally sensitive habitat area;

(3) The expansion or construction of water wells or septic systems;

(4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code Section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

(5) In areas which the commission or regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

(6) Any improvement to a structure where the coastal development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit;

(7) Any improvement to a structure which changes the intensity of use of the structure;

(8) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor–serving commercial use to a use involving a fee ownership or long–term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

(c) In any particular case, even though the proposed improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed improvement shall not be undertaken without a permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(b), Public Resources Code.

HISTORY

1. New subchapter 7.5 (Section 13253) filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment of subsection (b)(1) filed 7–24–80; effective thirtieth day thereafter (Register 80, No. 30).
4. Amendment filed 1–28–81; effective thirtieth day thereafter (Register 81, No. 5).
5. Amendment of subsection (c) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
6. Amendment of subsections (b)(1)–(2), (b)(4), (b)(6) and (c) filed 9–20–99; operative 10–20–99 (Register 99, No. 39).

Subchapter 8. Minor Adjustments to the Coastal Zone Boundary

Article 1. Boundary Adjustment and Boundary Determination Requests

§ 13255.0. Scope.

This subchapter shall govern (a) the request for a determination of the precise location of a particular parcel or area of land in relation to the boundary of the coastal zone, and (b) the request, review and implementation of proposed minor adjustments to the inland boundary of the coastal zone pursuant to Public Resources Code Section 30103(b). Boundary adjustments made pursuant to this subchapter shall be determinative for all purposes with respect to the California Coastal Act of 1976.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. New Subchapter 8 (Articles 1–4, Sections 13255.0–13259, not consecutive) filed 6–6–79; effective thirtieth day thereafter (Register 79, No. 23).
2. Amendment of article heading and section filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

§ 13255.1. Request for Boundary Determination.

Any request for a written determination by the Commission of the precise location of a particular parcel or area of land in relation to the boundary of the coastal zone shall be accompanied by payment of the fee set forth in Section 13055(b)(6).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Amendment of subsections (a), (c), and (d) filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).
2. Renumbering of former section 13255.1 to section 13255.2 and new section 13255.1 filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

§ 13255.2. Request for Boundary Adjustment.

(a) The owner of the affected lot or parcel, the local government of jurisdiction, or the executive director of the commission may propose that the inland boundary of the coastal zone be adjusted to avoid bisecting any lot or parcel, or to conform the boundary to readily identifiable natural or manmade features. The request to adjust the boundary shall be made in writing to the commission.

(b) The request for a boundary adjustment shall be accompanied by sufficient information to enable the commission to determine whether the proposed adjustment is consistent with Public Resources Code Section 30103(b). This information shall include:

(1) Name and address of the owner of the affected lot or parcel.

(2) Names and addresses of all occupants of the affected lot or parcel.

(3) A description and documentation of the applicant's legal interest in the affected lot or parcel.

(4) Names and addresses of all owners and occupants of all lots or parcels wholly or partially within 100 feet of the affected lot or parcel and the addresses of all such lots or parcels;

(5) A map of suitable scale to show the present and proposed location of the coastal zone boundary, all lots or parcels within 100 feet of the affected lot or parcel, and the existence and location of all readily identifiable natural and manmade features;

(6) A description of the existing use of the affected lot or parcel and the nearby lands.

(7) A discussion of the reasons is for the request that the coastal zone boundary be adjusted.

(c) The person requesting the adjustment shall post a conspicuous notice of the proposed adjustment at the time the request is submitted to the commission. The form and location of the posted notice shall be similar to that required by Section 13054(b) for permit matters.

(d) The request for a boundary adjustment shall be accompanied by a filing and processing fee as set forth in Section 13055(b)(7).

The executive director of the commission may waive the filing and processing fee in full or in part where the request concerns the same lot or parcel considered for a previous boundary adjustment or permit application where no substantial staff work is required or where the request is made by the local government of jurisdiction.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Renumbering of former section 13255.2 to new section 13255.3 and renumbering of former section 13255.1 to section 13255.2, including amendment of subsection (d) and repealer of subsections (d)(1)–(4), filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

§ 13255.3. Notification Requirements.

The person requesting the adjustment shall provide notice to affected parties, property owners and occupants of any parcel within 100 feet of any boundary of the affected parcel and to any other persons known to be interested in the proposed boundary adjustments. This notice shall comply with the requirements prescribed in Section 13054 for permit matters.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Renumbering of former section 13255.2 to new section 13255.3 filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

Article 2. Commission Action on Boundary Adjustment Request

§ 13256.0. Consideration by Regional Commission of Requests for Boundary Adjustments.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30103(b) and 30305, Public Resources Code.

HISTORY

1. Amendment of Article heading and repealer of Section 13256.0 filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13256.1. Staff Review.

(a) Within five (5) days of receipt of a request for a boundary adjustment, the executive director of the commission shall make a preliminary review of the request. If the request does not conform to the provisions of Section 13255.1 or if the proposed adjustment patently fails to conform to the requirements of Public Resources Code Section 30103(b), the executive director of the commission shall reject the request and shall notify the person requesting the adjustment of his or her determination.

(b) Following the preliminary review the executive director of the commission shall further review the requested boundary adjustment and shall investigate:

(1) whether there are alternative adjustments to the boundary either seaward or landward which would be consistent with the provisions of Public Resources Code Section 30103(b) and which would result in a more readily identifiable location for the coastal zone boundary;

(2) whether there are coastal resources on the affected lot or parcel which would be affected by a change in the boundary;

(3) whether an adjustment to the boundary would affect coastal resources on other lands;

(4) whether an adjustment to the boundary would affect opportunities for public access to or along the coast;

(5) whether an adjustment to the boundary would affect the ability of local government to prepare a local coastal program in conformance with the goals, objectives and policies of the Coastal Act of 1976.

In conducting the investigation of the proposed boundary adjustment the executive director of the commission shall consult with the affected local governments.

(c) The executive director of the commission shall prepare and distribute a written staff recommendation regarding the requested boundary adjustment in a manner similar to the manner for preparation and distribution of staff recommendations on permit matters.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13256.2. Commission Action on Boundary Adjustment.

Within 49 days of the filing of a request for a boundary adjustment the Commission shall conduct the public hearing and take action in substantially the same manner as provided in Sections 13057–13096. The Commission shall adopt a resolution regarding the request for an adjustment to the coastal zone boundary. The resolution shall be accompanied by specific factual findings to support the following legal conclusions:

(a) The adjustment conforms to the requirements of Section 30103(b) of the Coastal Act; and

(b) The adjustment will not interfere with the achievement of the policies of Chapter 3 of the Coastal Act; and will not prejudice the preparation of a local coastal program conforming to Chapter 3 of the Coastal Act.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 3. Commission Hearing and Voting Procedure

§ 13257.0. Commission Action upon Receipt of Regional Commission Recommendation.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103, Public Resources Code.

HISTORY

1. Amendment filed 1–3–80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–3–80.
2. Certificate of Compliance transmitted to OAH 4–29–80 and filed 5–8–80 (Register 80, No. 19).
3. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13257.1. State Commission Action Without De Novo Public Hearing.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13257.2. State Commission Action with a De Novo Public Hearing.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13257.3. Qualifications to Testify Before the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13257.4. Evidence.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Repealer filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13257.5. Adoption by State Commission.

Upon commission approval of adjustment to the coastal zone boundary, the executive director of the commission shall record the adjustment on the official jurisdiction maps and file them with the appropriate county clerk within thirty (30) days of the commission action.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Article 4. Withdrawal and Reapplication

§ 13258. Withdrawal of Boundary Adjustment Request.

At any time before the commission commences the roll call for a final vote on the boundary adjustment request, the person requesting the boundary adjustment may withdraw the request. The withdrawal must be in writing or stated on the record and does not require commission concurrence.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

§ 13259. Reapplication.

Following a final decision upon a request for a coastal zone boundary determination, no person previously requesting a boundary adjustment may resubmit to the commission a request for a boundary adjustment for the same parcel for a period of six months from the date of the previous final decision. The six–month waiting period provided in this section may be waived by the commission for good cause.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30103(b), Public Resources Code.

HISTORY

1. Amendment filed 8–14–81; effective thirtieth day thereafter (Register 81, No. 33).

Chapter 7. Coastal Development—Permits Issued by Local Governments and Other Public Agencies

Subchapter 1. Coastal Development Permits Issued by Local Governments

§ 13300. Applicability of Chapter to Developments Within the Coastal Zone.

This chapter shall govern the issuance by local governments of coastal development permits pursuant to Public Resources Code Section 30600(b) and shall be applicable to any person wishing to perform or undertake any development in the coastal zone except for the following:

(a) Any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled.

(b) Any development by a public agency for which a local government permit is not otherwise required.

(c) Any development subject to the provision of Section 30608, 30610, 30610.5, 30611 and 30624 of the Public Resources Code.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600(b) and 30601, Public Resources Code.

HISTORY

1. New Chapter 7 (Sections 13300–13327, not consecutive) filed 2–11–77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Amendment of NOTE filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

Article 1. Local Government Coastal Development Permit Program

§ 13301. Coastal Development.

(a) Following the implementation of a coastal development permit program by a local government as provided in Section 13307, any person wishing to perform a development within the affected jurisdiction except as specified in Section 13300 shall obtain a coastal development permit from the local government. If the development is one specified in Public Resources Code 30601, a permit must also be obtained from the commission in addition to the permit otherwise required from the local government; in such instances, an application shall not be made to the commission until a coastal development permit has been obtained from the appropriate local government.

(b) Where any proposed activity involves more than one action constituting a development under Public Resources Code, Section 30106, the sum of such actions may be incorporated into one coastal development permit application and into one coastal development permit for purposes of notification requirements of Section 13315; provided, however, that no individual development activity may be commenced or initiated in any way until the overall development has been reviewed pursuant to the provisions of Sections 13315–13325.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600 and 30601, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

Article 2. Requirements for the Local Government Coastal Development Permit System

§ 13302. Coastal Development Permit Program Content.

In order to meet the requirements of the California Coastal Act including Public Resources Code, Sections 30602(a), 30604, 30620 and 30620.5 a local government coastal development permit program shall include, but not be limited to, the following:

(a) Application forms that require, as a minimum, the same information required on the application forms adopted by the commission pursuant to Public Resources Code, Section 30620(a)(1).

(b) Designation of a discretionary body or bodies which will review applications for and issue coastal development permits pursuant to the requirements of Public Resources Code, Section 30604, 30620.5(a) and 30625(c).

(c) Procedures which incorporate in the permit review process the interpretive guidelines issued by the commission pursuant to Public Resources Code, Section 30620(a)(3).

(d) Procedures for providing notice to the public, including all persons who request notice of pending permit applications and of rights of appeal within the local government and to the commission at a minimum equivalent to the notice required by Sections 13054 and 13063.

(e) Procedures which specify;

(1) The method by which interested persons may communicate concerns to the designated discretionary body or bodies which will issue coastal development permits.

(2) The designation of a chain of permit appeals, if any, within the local government.

(3) The point in the local review process at which a coastal development permit is deemed issued.

(f) Procedures for notification to the commission and any person who in writing has requested such information of any coastal development which has been issued and of any coastal development permit which has been denied.

(g) The content of the notice to the commission and other interested persons shall include, but not be limited to, 1) a copy of the permit application and any subsequent modifications thereto, 2) a summary of the action taken by the local government including written findings and 3) a verbatim copy of any conditions attached to the local government permit approval and of the findings made at the time of the approval. The executive director of the commission may modify the reporting requirements to eliminate technical matters that are not relevant to the requirements of the California Coastal Act of 1976.

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(h) Provisions for specific language that will be set forth in each coastal development permit making the permit effective only upon the expiration of the 20 working days from the time of the receipt of the notice by the executive director of the commission unless a valid appeal is filed within that time pursuant to Public Resources Code, Section 30602(a).

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30602, 30604, 30620, 30620.5 and 30625, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).
2. Editorial correction of printing error in subsection (a) (Register 93, No. 32).

§ 13303. Alternative Procedures for Implementation of a Local Government Coastal Development Permit Program.

Consistent with the requirements of Section 13302, a local government may incorporate the coastal development permit review into any existing local permit procedure which provides for reviewing public comment, the taking of evidence and the adoption of findings on all permits at a duly noticed public hearing or it may establish a separate coastal development permit application review procedure. A local government wishing to establish a local government coastal development permit program shall meet the requirements of the California Coastal Act of 1976 either by submitting its proposed program pursuant to Section 13304 or by adopting an ordinance prepared by the commission.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30600, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13304. Notice of Intent Alternative.

At least 30 days prior to the final adoption of a coastal development permit program a local government shall file a notice of intent with the commission. The notice of intent shall state the intent of the local government to adopt a coastal development permit program. Within 10 working days of receiving a notice of intent, the executive director of the commission shall prepare and distribute to the commission, to the local government and to any person known or thought to be interested an analysis of the local government's coastal development permit program. The analysis shall specify any provisions or omissions in the program which in the opinion of the executive director cause such program to be inconsistent with the requirements of the California Coastal Act or of Section 13302. The report may include recommended modifications of the program to cure the legal defects. The executive director shall make every effort to consult with the local government and suggest modifications to the coastal development permit program in order to resolve any areas of disagreement between the local government and the executive director prior to the commission's next regularly scheduled meeting. After giving notice in the manner prescribed in Section 13059, the commission shall review the executive director's report at its next regularly scheduled meeting and shall, following a public hearing on the report, adopt a resolution setting forth modifications, if any, in the local government coastal development permit program that it determines to be necessary to make such program consistent with the requirements of the California Coastal Act and Section 13302.

Following 30 days after filing with the commission a notice of intent the local government may adopt a coastal development permit program for the entire area of its jurisdiction within the coastal zone. If a coastal development permit program is adopted, the local government shall by resolution pursuant to Public Resources Code, Section 30620.5(b) notify the commission and all contiguous local governments within the coastal zone and shall publish the resolution in the same manner as it would publish a notice of a proposed general plan amendment; provided, however, that such notice shall also be published in the newspaper with the widest circulation in the portion of the local government jurisdiction lying within the coastal zone. The notification to the commission shall include a specific statement as to whether or not any modifications determined by the commission to be necessary pursuant to this Section have been incorporated in the coastal development permit program.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30620 and 30620.5, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13305. Local Government Ordinance Alternative.

HISTORY

1. Repealer filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13306. Coastal Development Fees.

Following certification of the local government's coastal development permit system, the local government may require fees from development applicants not exceeding those set forth in Section 13055 except for costs incurred above the fee schedule in complying with the requirements of these regulations and of the California Environmental Quality Act.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30620, Public Resources Code.

HISTORY

1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. New NOTE filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13307. Map of Areas Where Coastal Commission Permit Is Required.

Within 30 days of the receipt of a notice transmitted pursuant to Public Resources Code, Section 30620.5(b), the executive director of the commission shall publish a map of the coastal zone of the affected jurisdiction that delineates the areas where coastal commission permit applications will also be required pursuant to Public Resources Code, Section 30601(1) and (2).

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30601 and 30620.5, Public Resources Code.

HISTORY

1. New NOTE filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

Article 3. Local Government Issuance of a Coastal Development Permit

§ 13311. Issuance of a Coastal Development Permit.

A coastal development permit shall be deemed issued (a) when final review has occurred, (b) when, if applicable, all local rights of appeal have been exhausted and (c) when findings have been made that the interpretive guidelines have been reviewed and that the proposed development conforms with the requirements of Public Resources Code, Section 30604(a) and with any applicable decision set by the commission pursuant to Public Resources, Section 30625(c). If the development is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the local government shall also make the specific findings required by Public Resources Code, Section 30604(c).

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30604, 30620.5 and 30625, Public Resources Code.

HISTORY

1. New NOTE filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13313. Finality of Local Action.

The permit issued by the local government shall become final unless a valid appeal is filed with the commission of the notice specified in Public Resources Code 30620.5(c) or unless the permit application is subject to the requirements of Public Resources Code, Section 30601. Each local coastal development permit shall contain a statement that the permit shall not become effective until 20 working days have elapsed without an appeal to the commission following the proper receipt by the executive di-

rector of the commission of the notice of permit issuance pursuant to Section 13316. Permits subject to the requirements of Public Resources Code, Section 30601, shall also contain a statement that the permit shall not become effective until the requirements of Public Resources Code, Section 30601 have been fulfilled.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30601, 30602, 30620 and 30620.5, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

Article 4. Coastal Commission Review of Local Coastal Development Permit

§ 13315. Notice by Local Government.

Within five (5) working days of the issuance of a permit in conformity with Section 13311 the local government shall provide notification of such issuance on a form prescribed by the commission to the office of the commission and any persons who in writing requested such notice. Unless the local government provides such notification to the commission, the permit issued by the local government shall be of no force and effect.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30602 and 30620.5, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13316. Receipt by Executive Director.

The executive director of the commission shall not be deemed to have received the notice of permit issuance from the local government unless the notice form is completed and the permit on its face includes the findings required by Section 13311 and the project description set forth in the application for which the permit has been issued. If the executive director determines that the notice cannot be received, it shall be returned to the local government within five (5) working days of its submission for completion and appropriate adjustment of the 20 working day effective period statement required by Section 13313. A properly completed notice shall be received by the executive director of the commission and stamped with the date of receipt.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30602, 30604 and 30620.5, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth da thereafter (Register 83, No. 17).
2. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13317. Notice by Executive Director.

(a) Within 5 working days of receipt of the notice of permit issuance, the executive director of the commission shall post a description of the development, on a form prescribed by the executive director of the commission, at a conspicuous location in the office of the commission.

(b) Within 7 working days of receipt of the notice of permit issuance, the executive director of the commission shall forward to all known interested persons, to the members of the commission, a description of the development, on a form prescribed by the executive director of the commission, in a manner reasonably calculated to allow time for review of the development and filing of appeals.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30620.5 and 30625, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth da thereafter (Register 83, No. 17).

§ 13318. Filing of Appeal from the Issuance of a Coastal Development Permit.

An appeal of a local government's issuance of a coastal development permit may be filed by any person qualified under Public Resources Code Section 30602. The appeal must contain substantially the information required by Section 13111, must be received in the commission office before or on the 20th working day after receipt of the notice of permit issuance by the executive director of the commission and must comply with the requirements of Section 13119.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30602, 30604, 30620.5 and 30625, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13319. Filing of Appeal from the Denial of a Coastal Development Permit.

Where a local government approves a development on the basis of local land use regulations but denies the issuance of a coastal development permit because it cannot make the findings required by Section 13311, the applicant may appeal such denial of the coastal development permit in the manner provided in Section 13318. In addition, such appeal shall be valid only if the local government approvals fulfill the preliminary local approval requirements of Sections 13052 or 13053. An appeal from a local government denial on the basis of local land use regulations shall not be valid.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30604 and 30625, Public Resources Code.

HISTORY

1. New NOTE filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13320. Effect of Appeal to the Commission.

Upon receipt in the commission office of a timely valid appeal by a qualified appellant the executive director of the commission shall notify the permit applicant and the affected local government that the operation and effect of the coastal development permit has been stayed pending final action on the appeal by the commission as required by Section 30623 of the Public Resources Code. Within five (5) working days of the receipt of a notice of appeal from the commission, the affected local government shall deliver to the executive director of the commission all relevant documents and materials used by the local government in its consideration of the coastal development permit application.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30602 and 30623, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13321. Commission Consideration of Appeal.

Unless the commission finds that the appeal raises no substantial issue in accordance with the requirements of Public Resources Code Section 30625(b), and Section 13115(a) and (c) of these regulations, the commission shall conduct a de novo consideration of the application in accordance with the procedures set forth in Sections 13114 and 13057–13096 of these regulations.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600, 30621 and 30625, Public Resources Code.

HISTORY

1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).
2. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13323. Appeal to Commission.

HISTORY

1. Repealer filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13325. Notification of Commission Action to Local Government.

Following a final action by the commission on an appeal from a local government issuance of a development permit, the commission shall notify the local government of the action taken. Such notification shall ordinarily be transmitted within ten (10) working days of final action by the commission.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30600 and 30602, Public Resources Code.

HISTORY
1. Amendment filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

§ 13327. Litigation Involving Local Government Coastal Permit.

HISTORY
1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).
2. Repealer filed 4–20–83; effective thirtieth day thereafter (Register 83, No. 17).

Subchapter 1.5. Permits Issued and Reviewed by Local Governments and the Commission Pursuant to Certified Land Use Plans

Article 1. Procedures for the Issuance of Administrative Permits by a Local Official

§ 13328. Scope of the Article.

This article governs special procedures for processing applications for permits by a local government pursuant to the requirements of Public Resources Code Section 30624 where the coastal development permit authority has been delegated to a local government pursuant to Public Resources Code Section 30600.5. prior to the certification of its local coastal program. It shall apply to the issuance of administrative permits by an appropriate local official so designated by resolution of the governing body of a local government that has been delegated coastal development permit authority.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

HISTORY
1. New Subchapter 1.5 (Articles 1–3, Sections 13328–13343) filed 4–29–82; effective thirtieth day thereafter (Register 82, No. 18).

§ 13328.1. Applicant's Statement.

The local government shall provide the applicant with a permit application form that allows the applicant an opportunity to state that in his or her opinion the work applied for falls within the criteria established by Public Resources Code, Section 30624. The permit application form must contain:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project conforms to the provisions of Public Resources Code Section 30624 and complies with all relevant policies of the local government's certified land use plan portion of its local coastal program, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the local government will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in Public Resources Code Section 21068 (California Environmental Quality Act) and Title 15 California Administrative Code Section 15002(g).

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application, and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in matters concerning the application.

(d) Any information by the local government or designated local official determines is necessary to adequately determine whether the development is consistent with the certified land use plan.

(e) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13328.2. Applications That May Qualify for an Administrative Permit.

(a) The designated local official may process as an administrative permit an application for work that conforms to the criteria set forth in Public Resources Code Section 30624, if the proposed work is, in the opinion of the designated local official, de minimis with respect to the policies and objectives of the local government's certified land use plan portion of its local coastal program.

(b) If an application for an administrative permit is filed but the designated local official finds that the application does not meet the criteria of Public Resources Code Section 30624, he or she shall notify the applicant that a regular permit application is required pursuant to the provisions of Public Resources Code Section 30600.5.

(c) The designated local official shall not issue an administrative permit for any development that falls within the provisions of Public Resources Code Sections 30519(b) and 30601 which require that a coastal development permit application must be reviewed by the California Coastal Commission pursuant to the provisions of Public Resources Code Section 30600.5.

(d) Any application for a development deemed a principal permitted use within the meaning of PRC Section 30624, may be issued as an administrative permit under this Article only if the development is specifically categorized as the principal permitted use in the certified land use plan or applicable zoning ordinances unless specifically set forth in PRC Section 30624.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13328.3. Copies of Application.

An application asserted to be within the criteria established by Public Resources Code Section 30624 shall be furnished to the local government by the applicant initially in one (1) copy, together with one copy of whatever maps and drawings are reasonably required to describe the proposal. A reasonable number of additional copies may, at the discretion of the designated local official, be required.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13328.4. Notice.

At the time the application is submitted for filing, the applicant must post, at a conspicuous place on the site, notice that an application for a permit for the proposed development has been submitted to the local government. Such notice shall contain a general description of the nature of the proposed development and shall be in a form easily read by the public. The local government shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to so post the completed notice form and sign the declaration of posting, the designated local official shall refuse to file the application, or shall withdraw the application from filing if it has already been filed, when he or she learns of such failure.

The applicant shall provide any additional notice to the public that the designated local official deems necessary. The appropriate local official shall also notify any persons known to be interested in the proposed development.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13328.5. Criteria and Content of Permits.

(a) The designated local official may approve or modify an application for improvements or other development governed by this article on the same grounds that the local government may approve an ordinary application and may include reasonable terms and conditions required for the development to conform with the policies of the local government's certified land use plan portion of its local coastal program.

(b) Permits issued for such developments shall be governed by the standards used in approving coastal development permits pursuant to Public Resources Code Section 30600.5 and implementing procedures adopted thereto.

(c) A permit issued pursuant to Public Resources Code Section 30624 and this article shall contain a statement that it will not become effective until the governing body of the local government has had an opportunity to review the matter at its first scheduled meeting after that permit has been issued by the appropriate local official.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13328.6. Refusal to Grant—Notice to Applicant.

(a) If the designated local official determines not to grant an administrative permit based on a properly filed application under this article, the designated local official shall promptly mail written notice to this effect to the applicant with an explanation of the reasons for this determination.

(b) If the designated local official makes the determination specified under (a), the applicant may proceed to file an application for a regular permit pursuant to the provisions of Public Resources Code Section 30600.5.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13328.7. Reports on Administrative Permits.

The designated local official shall report in writing to the governing body of the local government at each meeting the permits that are approved under this article up until the time of the mailing for the meeting, with sufficient description of the work authorized to allow the governing body to understand the development proposed to be undertaken. Copies of this report shall be available at the meeting and shall have been mailed to the governing body and to all those persons who have in writing stated they wish to receive such notification at the time of the regular mailing for the meeting. Any such permits approved following the deadline for the mailing shall be included in the report for the next succeeding meeting. If 1/3 of the membership of the governing body of the local government so request, the issuance of an administrative permit governed by the Public Resources Code Section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a permit application governed by Public Resources Code Section 30600.5.

NOTE: Authority cited: Sections 30333 and 30624. Reference: Sections 30600.5, and 30624, Public Resources Code.

§ 13328.8. Appeal of Administrative Permit.

(a) Any person, the executive director of the California Coastal Commission, or any two members of the California Coastal Commission may appeal the decision to approve or deny an administrative permit to the commission. An administrative permit may not be issued until the expiration of the twenty (20) day appeal period. The twenty (20) working day period for appeal shall run from the date of the receipt of a notice of final local government action that contains sufficient information upon which to base an informed appeal.

(b) Processing of an appeal shall be governed by the provisions of Public Resources Code Section 30600.5 and California Administrative Code Sections 13330–13343, and shall be scheduled, heard and processed as priority items where time limits permit.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30602, Public Resources Code.

§ 13328.9. Amendments to Administrative Permits.

(a) Amendments to administrative permits may be approved by the designated local official upon the same criteria and subject to the same reporting requirements and procedures, including public notice and appeals, as provided for in this article in the original issuance of such administrative permits.

(b) If any amendment would, in the opinion of the appropriate local official, increase the cost of the proposed development to an amount that exceeds that specified in PRC Section 30624, the applicant shall thereafter be treated in the manner prescribed by the local governments implementing procedures adopted pursuant to PRC Section 30600.5 dealing with amendments to permits other than administrative permits.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

Article 2. Emergency Permit Applications Processed by Local Officials

§ 13329. Definition of Emergency.

"Emergency," as used in Public Resources Code Section 30624, and in this article, means: a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13329.1. Applications.

(a) Applications in case of emergency shall be made by letter to the appropriate local official designated by the local government or in person or by telephone, if time does not allow.

(b) The following information should be included in the request:

(1) Nature of the emergency;

(2) Cause of the emergency, insofar as this can be established;

(3) Location of the emergency;

(4) The remedial, protective, or preventive work required to deal with the emergency; and

(5) The circumstance during the emergency that appeared to justify the cause(s) of action taken, including the probable consequences of failing to take action.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13329.2. Verification of Emergency.

The appropriate local official shall verify the facts, including the existence and the nature of the emergency, insofar as time allows.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13329.3. Criteria for Granting Permit.

(a) The designated local official shall provide public notice of the emergency work, with the extent and type of notice determined on the basis of the nature of emergency.

(b) The designated local official may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the local official finds that:

(1) An emergency exists that requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of Public Resources Code, Section 30600.5 and the work can and will be completed within 30 days unless otherwise specified by the terms of the permit.

(2) Public comment on the proposed emergency action has been reviewed, if time allows; and

(3) The work proposed would be consistent with the requirements of the certified land use plan portion of the local government's local coastal program.

(c) The designated local official shall not issue an emergency permit for any work that falls within the provisions of Public Resources Code Sections 30519(b) and 30601 since a coastal development permit appli-

cation must be reviewed by the California Coastal Commission pursuant to the provisions of Public Resources Code Section 30600.5.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

§ 13329.4. Report to the Governing Body of the Local Government and to the Coastal Commission.

(a) The designated local official shall report, in writing, to the commission and to the governing body of the local government, at its first scheduled meeting after the emergency permit has been issued, the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall be mailed to all persons who have requested such notification in writing.

(b) The report of the designated local official shall be informational only; the decision to issue an emergency permit is solely at the discretion of the designated local official subject to the provisions of this article.

NOTE: Authority cited: Sections 30333 and 30624, Public Resources Code. Reference: Sections 30600.5 and 30624, Public Resources Code.

Article 3. Appeals to State Commission Prior to Certification of a Local Coastal Program

§ 13330. Scope.

The procedures of this subchapter shall apply to appeals to the California Coastal Commission where the coastal development permit authority has been delegated to a local government prior to certification of its local coastal program pursuant to Public Resources Code Sections 30520, 30600.5 and 30624. The procedures shall not apply to coastal developments specified in PRC Sections 30519(b) and 30601 or with respect to any development proposed by any state agency where, pursuant to PRC Section 30600.5(b), direct application must be made to the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30520, 30600.5 and 30624, Public Resources Code.

§ 13331. Notice of Final Local Action.

Within five (5) working days of the approval or denial of a coastal development permit, or within five (5) working days of its failure to act within any specified time limits contained in PRC Sections 30621 and Government Code Sections 65950–65957.1, a local government shall notify the commission and any person requesting such notification in writing of the final local action.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5 and 30620.5, Public Resources Code.

§ 13332. Commission Procedures upon Receipt of Notice of Final Local Action.

Within five (5) working days of receipt of notice of final local action, the executive director of the commission shall post a description of the coastal development permit action by the local government in a conspicuous location in the commission's district office having jurisdiction of the development. At the same time, the executive director shall mail notice of the local action to members of the commission. The twenty (20) working day appeal period shall be established from the date of receipt of a notice of final local government action that contains sufficient information upon which to base an informed appeal including project description, conditions of approval, written findings and the procedures for appeal. If the executive director determines that the notice is insufficient, he shall notify the local government within five (5) working days and a sufficient notice shall be resubmitted in order to begin the twenty (20) working day appeal period.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30602 and 30620.5, Public Resources Code.

§ 13333. *Filing an Appeal.*

(a) Any final action by the local government may be appealed by any person, the executive director of the commission or any two (2) members of the commission. The appeal must contain the information contained in Section 13111(a).

(b) The appeal must be received in the appropriate district office on or before the twentieth (20th) working day after receipt of the notice of the final local government action.

(c) The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5 and 30602, Public Resources Code.

§ 13334. Effect of Appeal.

The effect of the receipt of an appeal to the commission shall be as specified in Section 13112.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13335. Grounds of Appeal.

The grounds of any appeal filed pursuant to this subchapter shall be that the proposed development is not in conformity with the certified land use plan portion of the local coastal program.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13336. De Novo Review.

Where the appellant has exhausted local appeals a de novo review of the project by the commission shall occur only after the local decision has become final.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13337. Substantial Issue Determination.

(a) At the next practicable meeting following the filing of an appeal with the commission or as soon thereafter as practical, the executive director shall make a recommendation to the commission as to whether the local government action raises a substantial issue within the meaning of PRC Section 30600.5(b).

(b) Unless the commission finds that the appeal raises no substantial issue as to conformity with the certified land use plan, it shall consider the application de novo in accordance with the procedures set forth in Sections 13057–13096; except that the commission findings and final staff recommendation shall include a statement of facts and legal conclusions as to whether the proposed development conforms to the local government's certified land use plan.

(c) The commission may ask questions of the applicant, the appellant, any person who participated in the local government action, the Attorney General or the executive director prior to determining whether or not to hear an appeal. A majority vote of the members of the commission present shall be required to determine not to hear an appeal.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

§ 13338. Withdrawal of Appeal.

Appeals may be withdrawn as provided for in Section 13116.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5, 30602 and 30620.5, Public Resources Code.

§ 13339. Remand to Local Government.

At any time prior to the final vote of the commission on an appeal, the commission, after consulting the applicant, may order the application returned to the appropriate local government for further proceedings.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5, 30602 and 30620.5, Public Resources Code.

§ 13340. Qualifications to Testify Before Commission.

Only the applicant, appellant, persons who participated in the application before the local government (or their representatives), and the local

government, shall be qualified to testify at the commission hearing at any stage of the appeal process. All other persons may submit comments in writing to the commission or executive director, copies or summaries of which shall be provided to all commissioners pursuant to Sections 13060–13061.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5, 30602 and 30620.5, Public Resources Code.

§ 13341. Evidence.

Evidence before the Commission shall be as provided for in Section 13118.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5, 30602 and 30620.5, Public Resources Code.

§ 13342. Standard of Review.

The standard of review shall be whether the proposed development is in conformity with the certified land use plan portion of the local coastal program and PRC Section 30604(c).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5 and 30604, Public Resources Code.

§ 13343. Commission Notification of Final Action.

Within five (5) working days of a final commission action on an appeal from a local government decision, the commission shall transmit notice of the action taken to the local government, the applicant, the appellant and parties who testified or orally before or in writing to the commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30600.5 and 30604, Public Resources Code.

Subchapter 2. Public Works Plans

Article 1. Scope and Applicability of Subchapter

§ 13350. Scope of Subchapter.

This subchapter shall govern Commission review of plans for public works plans pursuant to Public Resources Code Sections 30515 and 30605 to 30607.1.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30515 and 30605, Public Resources Code.

HISTORY

1. New subchapter 2 (Articles 1–5, Sections 13350–13361) filed 6–5–79 as an emergency; effective upon filing (Register 79, No. 23).
2. Certificate of Compliance filed 10–3–79 (Register 79, No. 40).
3. Editorial correction of History Note No. 2 (Register 80, No. 1).
4. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13351. Applicability of Subchapter.

This subchapter shall apply to plans for public works activity as defined in Public Resources Code Section 30114.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

Article 2. Application Requirements

§ 13352. Waiver of Preliminary Approvals.

The executive director may waive the requirements of Section 13052 for preliminary approval by federal, state or local government agencies for plans submitted pursuant to this subchapter; provided however that any plan submitted pursuant to this subchapter shall contain the information required pursuant to Section 13353.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13353. Information Requirements.

Any plan submitted pursuant to this subchapter shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan to determine consistency with the policies of Chapter 3 of the Coastal Act of 1976, including, but not limited to the following where applicable:

(1) the specific type of activity or activities proposed to be undertaken;

(2) the maximum and minimum intensity of activity or activities proposed to be undertaken (e.g., maximum number of recreational vehicle campsites, maximum treatment capacity for a sewage treatment plant, maximum traffic capacity of a road);

(3) maximum size of facilities proposed to be constructed pursuant to the plan (e.g., size of a treatment outfall, number of lanes of a road) and the proposed timetable for precise definition of all projects included in the plan and any phasing of development activity contemplated;

(4) the service area for the proposed activity or activities;

(5) the proposed method of financing the activity or activities including any direct or indirect means of obtaining or guaranteeing funds through the assessment or any other form of levy against lands located within the coastal zone and an estimate of the projected amount of revenues to be obtained from land or water areas located in the coastal zone over the useful life of the proposed development;

(6) the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plans. The executive director of the Commission may require the submission of any additional information the executive director deems necessary pursuant to the requirements of Public Resources Code Section 30605.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 10–3–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 40).
2. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13353.5. Public Hearing Prior to Filing of Public Works Plan.

Prior to the filing of a public works plan,the submitting agency or local government shall hold a public hearing at the local level on the proposed public works plan. The public hearing shall be held within a reasonable time prior to submission of the plan (as determined by the executive director) such that the public is afforded an adequate and timely comment period on the proposed plan. In determining the reasonableness of the time of the prior public hearing(s) the executive director shall consider the scope or size of the project, the progress of the originating agency toward obtaining all funding and governmental approvals, and the development of projects under the proposed plan. A steady progression of the originating agency toward development of the plan in this manner, after holding public hearings on the plan, shall constitute evidence of the reasonableness of the time of the prior public hearing.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. New section filed 10–3–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 40).

§ 13354. Filing of a Plan.

The executive director of the Commission shall deem an application filed only at such time as the executive director determines that the information required pursuant to Section 13353 has been received at the appropriate Commission office and that all other requirements of law, and of these regulations, for a valid plan application have been met. Said review shall be completed within a reasonable time but unless there are unusual circumstances, no later than five (5) working days after the date it is received in the district office of the Commission during normal business hours of the said office. Immediately upon making such determination, the executive director shall affix the date of filing to the application file and so notify the applicant.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
2. Amendment filed 6–16–82; effective thirtieth day thereafter (Register 82, No. 25).

§ 13355. Environmental Information.

(a) The executive director shall provide, make available to the public, or demonstrate that such information has been made available in accordance with these regulations, detailed environmental information on the plan sufficient to enable the Commission to determine the consistency of the plan with the policies of the Coastal Act.

(b) Where the executive director determines that it is not feasible to distribute environmental information due to the size or volume of the documents, or because of the costs of such distribution, the executive director shall provide notice to interested persons of the location of the environmental documents which are available for review, and a list of those documents.

(c) The environmental information shall be distributed or made available to the public prior to public hearing on the plan.

(d) The Commission shall provide the opportunity for public comment in response to the environmental information prior to the close of the public hearing on the plan.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

Article 3. Plan Review, Procedures and Findings

§ 13356. Procedures for Plan Review Prior to Certification of Local Coastal Program(s) in the Affected Area.

(a) Except as provided below, for that portion or aspect of a plan submitted pursuant to this subchapter that affects a geographic area for which a local coastal program has not yet been certified by the Commission, all hearing requirements and procedures shall be the same as provided for the review of a long–range development plan as set forth in Sections 13518 to 13528.

(b) Approval of a public works plan by the Commission shall be accompanied by specific written findings that the proposed development is in conformity with the provisions of the California Coastal Act of 1976 and that required mitigation will be implemented prior to or concurrent with the development causing the impact including specific factual findings supporting the following legal conclusions:

(1) that the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30200);

(2) that there are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

(c) The executive director of the Commission shall set the plan filed for public hearing no later than the 60th day following the date on which the application was filed. All dates for public hearing shall be set with a view toward allowing adequate public dissemination of the information and toward allowing public participation and attendance at the hearing while affording the applicants expeditious consideration of the plan.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
2. Amendment of subsection (b) filed 6–16–82; effective thirtieth day thereafter (Register 82, No. 25).

§ 13357. Procedure for Plan Review Following Certification of a Local Coastal Program(s) in the Affected Area.

(a) Plan does not require amendment to local coastal program.

(1) If, after certification of local coastal program, a proposed public works plan does not require an amendment to the local coastal program pursuant to Public Resources Code Section 30515, the person authorized to undertake the plan may submit the plan to the Commission for review and certification. The purpose of the Commission review of the plan shall be to define the scope of review of any subsequent project contained in the plan.

(2) The Commission review shall be undertaken only after consultation with the affected local government who may recommend modifications necessary for the proposed plan to adequately carry out the certified local coastal program.

(3) The notice and hearing requirements of Sections 13354–13356 shall also apply to any public works plan that affects directly a portion of the coastal zone for which a local coastal program has been certified by the Commission. In addition, at least ten (10) working days prior to the first public hearing on a proposed plan directly affecting such an area, the executive director of the Commission shall direct the Commission staff to consult with the affected local government with respect to the impact of the proposed plan on the coastal zone and on the certified local coastal program; the results of such consultation shall be reported to the Commission at the first public hearing on the proposed plan. At least five (5) working days prior to transmitting a written recommendation on the proposed plan to the Commission, the executive director shall request that the affected local government(s) transmit to the Commission its recommendations.

(4) Approval of a public works plan by the Commission shall be accompanied by specific factual findings supporting the conclusion that the public works plan, as approved, is in conformity with the certified local coastal program in jurisdictions affected by the proposed public works plan.

(5) Following Commission certification of a public works plan, any review of a specific project contained in the plan shall be to determine the conformity of the project with the certified public works plan, as provided in Sections 13358 and 13359.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30515 and 30605, Public Resources Code.

HISTORY

1. Amendment filed 10–3–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 40).
2. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 4. Project Review

§ 13358. Coastal Development Permit Review Concurrent with Public Works Plan Review.

(a) If a proposed project intended to be undertaken pursuant to a public works plan is submitted to the Commission for a development permit concurrent with the submittal of a public works plan, the Commission shall review the project and the plan concurrently, and shall, if the project meets the requirements of the Coastal Act, approve the project as an integral component of the public works plan. The Commission shall require conditions, where necessary, to bring the project into conformance with the Coastal Act.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13359. Specific Project Review Following Certification of Public Works Plan.

The following requirements shall govern projects submitted after a public works plan is approved:

(a) If a proposed project intended to be undertaken pursuant to an approved public works plan is the subject of a coastal development permit application prior to the certification of a local coastal program, the legal entity responsible for the project shall submit the notice and information regarding the proposed development pursuant to the requirements of Public Resources Code Section 30606. Such notice shall be reviewed and deemed filed by the Executive Director of the Commission only if it complies with the provisions of Sections 13353 and 13354, and only if the Executive Director determines that the information supplied is sufficient to allow the Commission to determine whether the proposed project is consistent with the certified public works plan.

(b) The Commission shall, within thirty (30) working days of filing of such notice, by a majority of the members present with a quorum present determine whether the proposed development is consistent with the certified public works plan. If the Commission determines that the project is not consistent with the approved plan and that conditions may be required in accordance with the provisions of Public Resources Code Sections 30605–30607.1, in order to bring the project into conformance with the approved plan, the Commission shall vote on the proposed conditions at the next scheduled public hearing (generally no later than twenty–one (21) days after the close of the hearing that determined inconsistency with the approved public works plan.) The conditions imposed upon a project in accordance with the provisions of Public Resources Code Sections 30605–30607.1 shall be approved by a majority of the members present with a quorum present. If the Commission is unable to agree, by a majority of its members present, upon conditions, the project shall be deemed approved as proposed.

(c) The hearing procedures governing the Commission's determination of consistency and action on proposed conditions shall be the same as those set forth in Section 13356.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).
2. Amendment of subsection (b) filed 6–16–82; effective thirtieth day thereafter (Register 82, No. 25).

Article 5. Project Review After Certification of Local Coastal Program

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. Amendment filed 10–3–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 40).
2. Repealer of Article 5 (Sections 13360 and 13361) filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 6. Amendment of Public Works Plan

§ 13365. Application for Amendment to Public Works Plan.

An application for an amendment to a certified public works plan shall be submitted to the executive director of the Commission and shall contain information which meets the requirements for submittal of public works plans in Sections 13353 and 13354.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

HISTORY

1. New Article 6 (Sections 13365–13371) filed 10–3–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 40).

§ 13366. Public Hearings Prior to Submission of Application for Amendment to Public Works Plan.

Prior to the submission of an application for an amendment to a certified public works plan, the applicant shall demonstrate that a public hearing at the local level has been held on the proposed amendment within a reasonable time prior to submission of the amendment application to the Commission. The reasonableness of the time of the prior public hearing shall be measured by the same standards as applied in Section 13353.5.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13367. Rejection of an Application for Amendment.

An application for an amendment to a public works plan shall be rejected if, in the opinion of the Executive Director of the Commission, the proposed public works plan amendment would lessen or avoid the intended effect, or any conditions, of a certified public works plan. The determination by the Executive Director to reject an amendment application shall be transmitted, in writing, to the applicant with an explanation of the reasons for such rejection.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13368. Acceptance of Application for Amendment—Minor Amendment.

Where an application for an amendment to a public works plan is accepted, the Executive Director shall determine whether the proposed amendment is minor in nature. If the Executive Director determines that the proposed amendment is minor in nature, notice of such determination, including a summary of the procedures set forth in this Article shall be mailed to the Commission and to all parties the Executive Director knows or has reason to know may be interested in the amendment. If no written objection to the proposed amendment is received in the Commission office within fifteen (15) working days of published notice, the proposed amendment shall be deemed minor in nature, and shall be approved. The Executive Director shall notify the Commission of the approved minor amendment at the next regular meeting of the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13369. Acceptance of Application for Amendment—Regular Amendment.

If the Executive Director determines that the proposed amendment is not minor, or if objection is made to the Executive Director's determination, or if the proposed amendment affects conditions required in the certified plan for purposes of protecting a coastal resource or coastal access consistent with the findings required in Section 13356, the amendment application shall be processed in accordance with Sections 13370 to 13371 below.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13370. Notice of Proposed Public Works Plan Amendment.

The Executive Director shall notify the Commission, the applicant, any persons who participated in the Commission hearings for review of the public works plan, and any other persons known or thought to be interested in the proposed public works plan amendment of the acceptance of the amendment application. This notice shall be provided in the same manner and shall contain the same type of information as required for processing permit applications in Section 13057 and as required for the processing of public works plans in Section 13355.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13371. Procedure for Review of Public Works Plan Amendment.

The hearing requirements and procedures for review of a public works plan amendment shall be the same as provided for the review of public

works plans as provided in Section 13356, provided however, that where a public works plan amendment is submitted for a public works plan that was approved prior to the certification of a local coastal program, the following procedures shall apply:

(1) At least 10 working days prior to the first public hearing on a proposed plan amendment directly affecting a portion of the coastal zone for which a local coastal program has been certified by the Commission, the Executive Director of the Commission shall direct the Commission staff to consult with the affected local government with respect to the impact of the proposed plan amendment on the coastal zone and on the certified local coastal program; the results of such consultation shall be reported to the Commission at the first public hearing on the proposed amendment.

(2) At least five (5) working days prior to transmitting a written recommendation on the proposed plan amendment to the Commission, the Executive Director shall request that the affected local government(s) transmit to the Commission its determination as to whether the proposed plan amendment is in conformity with the certified local coastal program(s) in the jurisdiction(s) affected by the proposed plan amendment.

(3) The affected local government may, within its discretion, transmit its determination as to the conformity of the proposed plan amendment with the local coastal program, in writing to the Commission prior to the Commission's vote on the proposed plan amendment, and may include any recommended modifications of the proposed plan amendment that would conform it to the local coastal program; a local government may also indicate any proposed amendments to its local coastal program that would be necessary to accommodate the proposed public works plan amendment.

(4) Approval of a public works plan amendment by the Commission shall be accompanied by specific factual findings supporting the conclusion that the public works plan amendment, as approved, is in conformity with the certified local coastal program in jurisdictions affected by the proposed public works plan amendment.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30605, Public Resources Code.

Chapter 8. Implementation Plans

Subchapter 2. Local Coastal Programs (LCPs) and State University or College Long Range Development Plans (LRDPs)

Article 1. Scope and Definitions

§ 13500. Scope.

Pursuant to Public Resources Code Sections 30550, 30605 and 30606, this subchapter shall govern the submission, review, certification and amendment of local coastal programs (LCPs) and state university or college long range land use development plans (LRDPs) and the procedures for review of developments in accordance with such plans and programs.

NOTE: Authority cited: Sections 30333, 30501 and 30605, Public Resources Code. Reference: Sections 30605 and 30606, Public Resources Code.

HISTORY

1. Redesignation of Subchapter 2 (Sections 13600–13648, not consecutive) to Subchapter 6 (Sections 13600–13648, not consecutive) filed 6–21–78; effective thirtieth day thereafter (Register 78, No. 25).
2. New Subchapter 2 (Sections 13500–13546, not consecutive) filed 6–21–78; effective thirtieth day thereafter (Register 78, No. 25).
3. Repealer of Subchapter 2 (Articles 1–15, Sections 13500–13546, not consecutive) and new subchapter 2 (Articles 1–18, Sections 13500–13577, not consecutive) filed 6–4–82; effective thirtieth day thereafter (Register 82, No. 23).

* The reorganization of Subchapter 2 is printed as a repealer and adoption for clarity.

§ 13502. Definitions.

(a) "Governing Authority" means the Board of Regents of the University of California or the Board of Trustees of the California State University and Colleges or their designated representatives.

(b) "Long Range Development Plan" hereinafter referred to as "LRDP" means the relevant portions of the land use plans and policies for the physical development of campuses and educational facilities of the University of California or the California State University and Colleges, which are sufficiently detailed to indicate the kinds, location and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of other implementing actions.

(c) "Educational Facility" means any real property owned or controlled by the University of California or the California State University and Colleges, and used or contemplated for use for educational, residential, recreational or research purposes related to the purposes of the University of California or the California State University and Colleges. This shall not include properties owned by the state university or college systems held for investment purposes only.

(d) "Local Coastal Program" hereinafter referred to as "LCP" means a local government's program as defined in Public Resources Code Section 30108.6.

NOTE: Authority cited: Sections 30333, 30501 and 30605, Public Resources Code. Reference: Sections 30500 and 30605, Public Resources Code.

Article 2. Issue Identification

§ 13503. Methodology for Identifying Issues.

Pursuant to Public Resources Code Sections 30500(c) and 30501(a), an identification of coastal conservation and development issues shall be made as the first step in the preparation of an LCP or LRDP. For LCPs and LRDPs, the purpose of the "issue identification" is to: (1) determine the policies of the Coastal Act that apply in each jurisdiction; (2) determine the extent to which existing local plans are adequate to meet Coastal Act requirements; and (3) delineate any potential conflicts between existing plans and development proposals and the policies of the Coastal Act.

(a) Local government or the governing authority, in consultation with the Commission and with opportunity for full public participation, shall review the policies of Chapter 3 of the Coastal Act to determine which are applicable to the particular portion of the coastal zone under consideration. A review shall be made to determine the extent of analysis needed to address the applicable policies in the preparation of the LCP or LRDP. In addition, pursuant to Section 13513, identification shall be made with respect to uses, existing or anticipated, of more than local significance which must be addressed in the LRDP or LCP. Existing or potential conflicts shall be identified between the policies of Chapter 3 of the Coastal Act and (1) existing conditions in the coastal zone, (2) the kinds, location and intensity of development proposed by existing policies or development plans, and (3) major developments proposed by any port or harbor district, special district, state or federal agency or public utility that are made known to the local government. Where the local government or the governing authority proposes to revise substantially its current plans or regulations, this identification of conflicts should be based on a general assessment of areas needing revision rather than a detailed analysis of the current plans. Substantial existing or potential conflicts shall be set forth as coastal planning issues for specific geographic areas that are to be addressed in the LCP or LRDP.

(b) The local government or governing authority may use an alternative methodology for issue identification if the Commission reviews the alternative methodology and, after a public hearing, finds that it is adequate to address the policies of Chapter 3 of the Coastal Act of 1976, will insure the maximum degree of public participation and will insure consultation and coordination with the local coastal programs of contiguous local governments.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30501 and 30605, Public Resources Code.

§ 13504. Commission Review of Issue Identification.

(a) Except as may be modified by an alternative methodology approved pursuant to Section 13503(b), each local government or governing authority shall submit an issue identification to the Commission for review before formal submittal of the LCP or LRDP for review and certification.

(b) Any local government requesting funding assistance shall submit its issue identification as part of its work program proposal, and the Commission shall review it, together with the work program, as provided in Section 13505.

(c) The governing authority (and any local government that does not request funding assistance) shall transmit copies of its issue identification, including a statement regarding the manner in which the local government or governing authority intends to address coastal planning issues organized into an outline of major tasks to be performed, to interested persons and agencies and the Commission before beginning any substantial work on its LCP or LRDP but in no event less than seventy–five (75) days prior to the submission of its LCP or LRDP to the city council, board of supervisors, or Board of Regents or the Board of Trustees for preparation of the resolution for submittal pursuant to Public Resources Code Section 30510(a). The Commission shall hold at least one public hearing on the issue identification. The Commission public hearing shall take place within sixty(60) days of the receipt of the issue identification. The Commission, after public hearing, shall transmit its Commission comments to the local government or governing authority, interested persons and public agencies.

(d) A local government or governing authority that intends to submit existing plans as all or a portion of the LCP or LRDP shall submit the issue identification together with such existing plans and a discussion of the manner in which such plans meet the requirements of the Coastal Act of 1976; this may be combined with a submittal for preliminary review pursuant to Section 13517.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30501 and 30605, Public Resources Code.

§ 13505. LCP Work Programs for State or Federal Funding.

In addition to any requirements of the appropriate state and federal agencies, any grant of state or federal funding available to the Commission for disbursement to local governments for the preparation of local coastal programs shall be based on either an initial application or a work program approved by the Commission.

(a) An initial application may be made for purposes of obtaining funding for the preparation of a work program. The initial application shall describe the tasks and costs to be incurred by the local government for the development of the total work program for the preparation of the local coastal program. Such an initial application may be approved by the Commission, after public hearing, authorizing a grant to cover the minimum costs of developing the total work program.

(b) A total work program must be submitted by any local government seeking state or federal funding from the Commission for the preparation of the local coastal program.

The total work program shall include:

(1) an identification of coastal planning issues, pursuant to Section 13503;

(2) an outline of the methodology proposed to address the planning issues, pursuant to Section 13511;

(3) a description of the major tasks required to bring local plans, zoning, and, if required, other implementing actions into conformity with the Coastal Act policies and to assemble sufficient information for a thorough and complete review of such plans;

(4) the methods proposed for involving the public and affected agencies and districts in the LCP preparation;

(5) a time line indicating approximate dates of completion for major work items, and the schedule proposed for submitting local coastal program documents to the Commission; and

(6) an estimated budget for the local coastal program work items. If the total work program is phased over several years, the Commission may approve it in phases. The total work program may propose completion of the land use plan stage only, with a subsequent work program for zoning tasks.

(c) A proposed total work program and any annual increment thereof shall be submitted by the local government to the Commission. The Commission shall hold a public hearing, combined with any such hearing on the issue identification pursuant to Section 13504, and shall transmit any recommendation to the local government. Unless there are unusual circumstances, the Commission hearing and action on the work program shall take place within 75 days of the work program submittal by the local government.

The Commission may, prior to Commission hearings and action on the total work program, authorize a portion of the work program on an emergency basis if it finds that:

(1) such interim authorization is necessary to maintain on–going LCP staff or to expedite work on the LCP;

(2) the tasks identified are essential, non–controversial aspects of the total work program; and

(3) the amount of money authorized is the minimum needed during the interim period (not to exceed three (3) months) and is commensurate with the relative importance and complexity of the issues being addressed.

(d) The Commission shall approve the work program and authorize the grant for disbursement of state or federal funds to the local government where it finds, after public hearing, that: (1) the scope of tasks outlined appears to address adequately the policies of Chapter 3 of the Coastal Act, including uses of more than local importance and potential cumulative impacts or conflicts with other jurisdictions; (2) the costs of undertaking such tasks are reasonably related to the amount of work needed to resolve coastal planning issues; (3) tasks to be contracted for under such grants are not already required under other statutes or more appropriately undertaken by other agencies; and (4) the work program includes measures for involving the public and other agencies adequate to comply with the Coastal Act and with the requirements of the funding authority. If any issues not included in the work program are later determined to require further analysis as part of the local coastal program preparation, the work program shall be renegotiated to include the additional items and any additional funding assistance that may be required.

(e) Where a local government has requested the Commission to prepare a local coastal program pursuant to Public Resources Code Section 30500(a), the Commission staff, after consultation with the local government, shall prepare a work program and submit it for review and approval in accordance with the provisions of this Article.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30340, 30340.5 and 30340.6, Public Resources Code.

Article 3. (Reserved)

Article 4. Methodology

§ 13506. Preparation of Local Coastal Program for Separate Geographic Units.

Pursuant to the requirements of Public Resources Code Section 30511(c), a local government wishing to submit its local coastal program in separate geographic units consisting of less than the local government's jurisdiction lying within the coastal zone shall first file a request with the Commission that it be permitted to do so. Such a request may be made concurrent with the issue identification pursuant to Section 13504(c), the work program pursuant to Section 13505, or the preliminary review pursuant to Section 13517. The request shall contain information of sufficient detail to enable the executive director to adequately

analyze the request and make a recommendation. As soon as practicable after such a request, the executive director shall recommend in writing whether the request is consistent with the findings required by Public Resources Code Section 30511(c). If the Commission determines by a majority vote of members present, with a quorum being present, that the request is consistent with Public Resources Code Section 30511(c), the executive director shall notify the local government and shall make any necessary change in the overall local coastal program review schedule.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30511, Public Resources Code.

HISTORY

1. New section filed 7–23–82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 30).

§ 13507. Commission Preparation of a Local Coastal Program.

Any local government requesting that the Commission prepare a local coastal program or a portion thereof shall do so by appropriate resolution of the city council or board of supervisors. Upon completion of the proposed local coastal program documents in accordance with the public participation requirements of Section 13515, the executive director shall submit the proposal to the local government for review pursuant to Public Resources Code Sections 30503, 30504, 30510(a), 30512, 30513, and 30519.5(b).

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30500, Public Resources Code.

HISTORY

1. New section filed 7–23–82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 30).

§ 13510. Separate or Combined Long Range Development Plan.

A governing authority may prepare and submit for Commission review a long range development plan for any educational facility within the coastal zone. The governing authority may prepare a separate LRDP for each educational facility. However, if the Commission finds that a combined LRDP for several educational facilities would unduly hinder public participation in the preparation or review of such combined LRDP, it shall direct the governing authority to prepare and submit a separate LRDP for each educational facility.

NOTE: Authority and reference cited: Section 30605, Public Resources Code.

§ 13511. Common Methodology.

Where an LCP or LRDP is to be submitted pursuant to this subchapter, the local government or governing authority shall include the following in the scope of the LCP or LRDP pursuant to Public Resources Code Section 30501(a):

(a) The policies of Chapter 3 of the California Coastal Act of 1976 concerning specific coastal resources, hazard areas, coastal access concerns, and use priorities, including consideration of public access and recommended uses of more than local importance and relating to the area governed by the LCP or LRDP, shall be applied to determine the kind, location and intensity of land and water uses that would be in conformity with the policies of the Act. This determination shall include an analysis of the potential significant adverse cumulative impacts on coastal resources and access of existing and potentially allowable development proposed in the LCP or LRDP.

(b) With regard to LRDPs, the level and pattern of development selected by the governing authority shall be reflected in a long range land use development plan. The LRDP shall include measures necessary to achieve conformity with the policies of Chapter 3 of the California Coastal Act of 1976. Any plan submitted pursuant to this subchapter shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan to determine conformity with the policies of Chapter 3 of the Coastal Act. Such information shall include, but is not limited to the following: (1) the specific type of development activity or activities proposed to be undertaken; (2) the maximum and minimum intensity of such activity or activities (e.g., number of residents, capacity and service area of public works facility, etc.); (3) the proposed and alternative locations considered by any development activities to be undertaken pursuant to the LRDP; (4) a capital improvement program or other scheduling or implementing devices that govern the implementation of the LRDP; and (5) other information deemed necessary by the executive director of the Commission.

(c) With regard to LCPs, the level and pattern of development selected by the local government shall be reflected in a land use plan, zoning ordinances and zoning district maps. The local coastal program shall include measures necessary to achieve conformity with the policies of Chapter 3 of the California Coastal Act of 1976; such measures shall be based on the authority inherent in the reasonable exercise of police power, and specifically to the authority provided in the California Coastal Act of 1976 to control or prevent uses harmful to the coastal resources of the state.

(1) The land use plan component of a local coastal program shall incorporate a statement of applicable development and resource protection policies in the substantive text or geographic provisions of the general plan, including as may be appropriate in each jurisdiction the mandatory or optional elements of a general plan as provided in Government Code Sections 65301–65303 and 65560–65567, that are capable of carrying out the policies of Chapter 3 of the California Coastal Act of 1976.

(2) The zoning ordinances and zoning district map shall conform with and be adequate to carry out the policies, objectives, principles, standards and plan proposals set forth in the land use plan. The scope of measures contained in the zoning ordinance and/or district maps shall extend to the authority granted by the planning laws of California, including Government Code Sections 65850–65862 and 65910–65912. Where applicable and necessary to carry out the policies and provisions of an approved land use plan, these measures may include: exclusive use zones, overlay zones, conditionally permitted uses based on certain findings, sign and/or design controls, landscaping and grading regulations, hazard or geologic review requirements, open space and lot coverage standards, minimum lot sizes (including minimum acreages for agricultural and timberland conversion), density and timing of development standards based on public service capacities and recreational use needs, and any other similar ordinances within the scope of zoning measures.

(d) Where the application of the policies of Chapter 3 of the Coastal Act of 1976 requires limits or conditions as to the amount, timing, or location of public works facilities which are owned or operated by the local government or governing authority, an analysis shall be made to determine:

(1) existing and proposed capacities of such relevant public works systems;

(2) key decision points for stages of facility expansion; and

(3) what portion of public works facilities capacity is allocated to new development within the area and what portion is reserved for the priority uses as required by Public Resources Code Section 30254. A similar analysis and allocation shall be made of public recreational facilities to comply with Public Resources Code Section 30252(6).

(e) If the level and pattern of development recommended for the LCP or LRDP require the phasing of public service or recreational facilities which are owned or operated by the local government or governing authority in order to be consistent with the requirements of the California Coastal Act of 1976, the proposed measures for implementing public service and recreational facilities shall be specifically identified.

(f) A procedure shall be developed to insure adequate notice to interested persons and agencies of impending developments proposed after certification of the LCP or LRDP. For LRDPs, the procedures shall at a minimum conform to Section 13549.

(g) With regard to LRDPs, the governing authority may propose in the LRDP those categories of development for which no coastal development permit is required pursuant to Public Resources Code Section 30610, and those categories of development within specifically defined geographic areas for which there is no potential for adverse effects, either individually or cumulatively, on coastal resources or on public access to

or along the coast. After certification of the LRDP, categories of development defined pursuant to this subsection will not be subject to the procedures specified in Sections 13549 and 13550 requiring notice of the impending development and allowing Commission review of such proposed development projects.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Section 30501, Public Resources Code; and Section 65944, Government Code.

§ 13512. Public Access Component.

The public access component of the LCP or LRDP may be set forth in a separate plan element or it may be comprised of various plan components that are joined together in a text accompanying the submission of the LCP or LRDP. The public access component shall set forth in detail the kinds and intensity of uses, the reservation of public service capacities for recreation purposes where required pursuant to Public Resources Code Section 30254, and, if applicable, specific geographic areas proposed for direct physical access to coastal water areas as required by Public Resources Code Sections 30210–30224 and 30604(c). The public access component shall include an implementation schedule.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30500, Public Resources Code.

§ 13513. Uses of More Than Local Importance.

(a) General categories of uses of more than local importance that shall be considered in the preparation of LCPs and LRDPs include but are not limited to:

(1) state and federal parks and recreation areas and other recreational facilities of regional or statewide significance;

(2) military and national defense installations;

(3) major energy facilities;

(4) state and federal highways and other transportation facilities (e.g., railroads and airports) or public works facilities (e.g., water supply or sewer systems) serving larger–than–local needs;

(5) general cargo ports and commercial fishing facilities; and

(6) uses of larger–than–local importance, such as coastal agriculture, fisheries, wildlife habitats, or uses that maximize public access to the coast, such as accessways, visitor–serving developments, as generally referenced in the findings, declarations, and policies of the California Coastal Act of 1976.

(b) To the extent possible the Commission shall make recommendations as to specific uses of more than local importance as part of its review of the issue identification. Provisions for local government consideration of such uses shall be included in LCP work programs, pursuant to Section 13505. From time to time the Commission, or the executive director of the Commission pursuant to Commission authorization, may make additional recommendations for specific uses to be considered for particular geographic segments or educational facilities that were not anticipated earlier. Where necessary, LCP work programs shall be re–negotiated to include the additional items and any additional funding assistance that may be required.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30501 and 30350, Public Resources Code.

§ 13514. Alternative Methodology.

Any local government or governing authority proposing to use an alternative methodology shall submit its proposal to the Commission along with a statement explaining how and why the alternative differs from the above methodology. The alternative methodology shall be submitted to the Commission for review not later than the time of the issue identification review pursuant to Section 13504. Within a reasonable period of closing the public hearing on the alternative methodology, the Commission shall determine whether the alternative methodology addresses the policy requirements of Chapter 3 of the California Coastal Act of 1976 and should therefore be approved for use pursuant to Public Resources Code Section 30501(a).

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Section 30501, Public Resources Code.

Article 5. Public Participation

§ 13515. Public Participation and Agency Coordination Procedures.

Each local government and governing authority shall meet the requirements of Public Resources Code, Sections 30503 and 30504 by establishing procedures providing maximum opportunities for the participation of the public and all affected governmental agencies in the preparation of the LCP or LRDP.

(a) At a minimum, all notices for public review sessions, availability of review drafts, studies, or other relevant documents or actions pertaining to the preparation of the LCP or LRDP shall be mailed to:

(1) any member of the public who has so requested;

(2) each local government contiguous with the area that is the subject of the LCP or LRDP;

(3) local governments, special districts, or port or harbor districts that could be directly affected by or whose development plans should be considered in the LRDP;

(4) all of the state and federal agencies listed in Appendix A of the Local Coastal Program Manual;

(5) local libraries and media; and

(6) other regional or federal agencies that may have an interest in or be affected by the LCP.

Any reference in this subchapter to "interested parties" or "public agency" shall include the aforementioned persons or groups.

(b) Proposed LCP and LRDP documents including review drafts shall be made available at no cost to relevant state agencies and to other interested persons and agencies upon request;

For LCPs, the cost of duplicating and transmitting such materials shall be reimbursed under the public participation provisions of the work program. To the extent that request for materials exceed funding, materials shall be made available at cost.

(c) Notice of the availability of review drafts of LCP or LRDP materials and transmittal of said documents pursuant to paragraphs (a) and (b) shall be made as soon as such drafts are available, but at a minimum at least six (6) weeks prior to any final action on the documents by the local government or governing authority. Review drafts shall also be made readily available for public perusal in local libraries, in the administrative offices of the local government or educational facility and at the Commission offices.

(d) Notice of the local government's or governing authority's hearings on LCP or LRDP documents shall be given general publication and shall be transmitted to all interested persons and public agencies not less than ten (10) working days before the hearing. The hearing required by Public Resources Code Section 30510(a) should be set for a time certain. Where the local government or governing authority determines that it is legal, practical, and would increase public participation, the hearing should be held in the coastal zone or in a place easily accessible to residents of the coastal zone.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Section 30503, Public Resources Code.

Article 6. Preliminary Review of LCPs and LRDPs

§ 13516. Staff Review During Preparation.

During the preparation of the LCP or LRDP, the local government or governing authority shall to the extent possible coordinate with and be assisted by Commission staff in resolving issues as to conformity and sufficiency in meeting the requirements of the California Coastal Act of 1976. The executive director of the Commission may from time to time give non–binding informational opinions on such issues, based on staff interpretations of the Coastal Act and decisions of the Commission pursuant to Public Resources Code Section 30625(c).

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30001.5 and 36500, Public Resources Code.

§ 13517. Preliminary Review by the Commission.

(a) In addition to any Commission review of the issue identification, the governing authority preparing the LCP or LRDP shall be entitled to at least one preliminary review by the Commission prior to formal submittal. Where a local government has been authorized to prepare an LCP in separate geographic units, pursuant to Section 13507, each geographic portion is entitled to at least one such preliminary review. Additional review may be granted if the Commission determines that the review is required to clarify a major issue preventing progress on the LCP or LRDP for which prior decisions or interpretations of Coastal Act policies do not offer sufficient guidance and that the review will not interfere with the processing of other LCPs or LRDPs.

(b) If a local government or governing authority intends to submit existing plans or regulations as all or a portion of the LCP or LRDP, it may submit such existing plans for this preliminary review together with a discussion of the manner in which existing plans or regulations meet the requirements of Sections 13510–13514 and of Chapter 3 of the California Coastal Act of 1976. This review may be combined with the issue identification review, as set forth in Section 13504(c).

(c) Any preliminary review of a proposed LCP or LRDP by the Commission shall be scheduled at the convenience of the Commission, at times that will not interfere with the processing of other matters but shall, where practicable, be held within a reasonable distance of the affected area. The review shall be subject to public hearing, noticed to interested persons and agencies at least ten (10) days prior to the hearing and conducted in the same manner as for the land use plan, pursuant to Section 13526. Individual members of the Commission may ask questions and make statements but no vote shall be taken. However, in order to provide general direction on coastal issues raised in the preliminary review, the chairperson may, after consulting members of the Commission, summarize the views of the Commission.

(d) Any such Commission advisory review is intended to assist the local government or governing authority in preparing the LCP or LRDP but shall be advisory only and shall not constitute a final decision by the Commission as to the conformity of the LCP or LRDP with Coastal Act policies.

(e) Where the Commission is to prepare a local coastal program pursuant to Public Resources Code Section 30500(a) or Section 30517.5(b)(2), the Commission staff, after consultation with the local government, may submit the proposed local coastal program for preliminary review prior to formal submittal. The preliminary review shall be in accordance with Section 13517.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30501, Public Resources Code.

Article 7. Submission of LCPs and LRDPs

§ 13518. Resolution for Submittal.

(a) The LCP or LRDP shall be accepted for filing by the Commission only if it is submitted pursuant to a resolution adopted by the local government or Board of Regents or the Board of Trustees in accordance with the provisions of Public Resources Code Section 30510(a).

If an LCP is submitted in two phases or for separate geographic units, a resolution shall be required for each phase or separate geographic unit.

(b) A local government or governing authority may submit its proposed LCP or LRDP either:

(1) as a program that will take effect automatically upon coastal Commission approval pursuant to Public Resources Code Sections 30512, 30513, and 30519 for LCPs, or Public Resources Code Section 30605 for LRDPs or

(2) as a program that will require formal local government or governing authority adoption after commission approval. Under either of the alternative procedures, the requirements of Section 13544 must be fulfilled following Commission approval of the LCP or LRDP.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Section 30510, Public Resources Code.

§ 13519. Contents of Submittal.

Pursuant to Public Resources Code 30510(b), the LCP or LRDP submittal shall include:

(a) A summary of the measures taken to consult and coordinate with contiguous local governments and to provide other affected agencies and districts and the public maximum opportunity to participate in the LCP or LCP process, pursuant to Public Resources Code Section 30503; a listing of members of the public, organizations, and agencies appearing at any hearings or contacted for comment on the LCP or LRDP; and copies or summaries of significant comments received and of the local government's or governing authority's response to the comments. For LRDPs, these materials may be set forth in a final EIR as provided in Section 13559.

(b) All policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data in accordance with guidelines established by the Commission, that are in sufficient detail to allow review for conformity with the requirements of the California Coastal Act of 1976. Written documents should be readily reproducible. The land use plan or LRDP shall include a readily identifiable public access component as set forth in Section 13512. Land use maps shall be at a scale sufficiently detailed to show clearly the land use designations applicable to specific areas of the coastal zone and shall to the extent possible be correlated with and at a comparable scale to resource information and other mapped data.

(c) A methodology that meets the requirements of Section 13511 or an alternative methodology approved by the Commission pursuant to Section 13514, and (for LCPs) that demonstrates conformity with the requirements of Chapter 6 of the California Coastal Act of 1976.

(d) Any environmental review documents prepared for all or any portion of the LCP or LRDP pursuant to CEQA. As provided in Section 13559, environmental review documents may be integrated into the LRDP materials.

(e) For LCPs, a general indication of the zoning measures that will be used to carry out the land use plan (unless submitted at the same time as the land use plan).

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30503 and 30510, Public Resources Code.

§ 13520. Review of Filing.

The LCP or LRDP together with all necessary attachments and exhibits shall be deemed "submitted" after having been received and found by the executive director of the Commission to be in proper order and legally adequate to comply with the requirements of Public Resources Code Section 30510(b). Said review shall be completed within a reasonable time, but unless there are unusual circumstances, no later than ten (10) working days after the date it is received in the Commission office during normal working hours. The executive director shall cause a date of receipt stamp to be affixed to all LCP or LRDP submissions on the day they are so received and assign a date of submittal on the day they are found to be properly submitted. If the executive director determines that the materials received are not sufficient to satisfy the requirements of Public Resources Code Section 30510(b), the executive director shall transmit to the governing authority specific written comments regarding the inadequacy of the submission within the aforementioned 10 working days. Any disagreement between the executive director and the local government or governing authority as to information requirements may be resolved by the Commission. If the LCP or LRDP is found to be properly submitted, the executive director shall immediately notify the local government or governing authority and all persons known or thought to be interested in it. Notice to interested persons may be part of regular meeting notices.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30510, Public Resources Code.

Article 9. General Review Procedures for LCPs and LRDPs

§ 13522. Hearing Schedule.

A public hearing on the LCP or LRDP shall be held by the Commission not later than sixty (60) days following the day on which the LCP or LRDP was properly submitted. All dates for public hearing shall be set with a view toward allowing thorough public dissemination of the information contained in the LCP or LRDP prior to the time of the hearing, and toward allowing full public participation and attendance at the meeting. If a land use plan and implementing actions are combined in a total LCP, then the deadline for commission action on the land use plan phase shall apply to commission review of the total LCP.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30500 and 30511, Public Resources Code.

§ 13523. Summary of the LCP or LRDP.

(a) The executive director shall prepare a summary of the LCP or LRDP including any relevant attachments and exhibits. The summary shall be brief and shall fairly present the essential features of the plan with a reasonable degree of specificity. The summary shall be adequately illustrated with maps or drawings. The summary shall also be accompanied by an analysis of:

(1) questions of fact;

(2) the applicable policies of the California Coastal Act of 1976 as they apply to the geographic area of the coastal zone included within or affected by the LCP or LRDP;

(3) prior decisions by the Commission related to permit or planning questions;

(4) important policy issues raised by the LCP or LRDP;

(5) public comments received on the LCP or LRDP;

(6) comments received from governmental agencies, including comments submitted by the State Lands Commission pursuant to Public Resources Code Section 30416(a);

(7) significant environmental points raised during LCP or LRDP preparation; and

(8) other relevant matters.

The staff comments shall be clearly labeled to distinguish them from the description of the proposed LCP or LRDP itself. The executive director shall also include in the summary any description or analysis of the LCP or LRDP that the submitting local government or governing authority requests be included in the summary, provided, however, that such description or analysis shall be readily reproducible at a reasonable cost.

(b) Copies of LCP or LRDP related documents, not including reports on the LCP or LRDP prepared by staff, shall be available to any interested party at the cost of 1 cent per page and at no cost to local governments and state agencies. There shall be no charge to any interested party, local governments or state agencies for staff reports.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code; and Section 11125.1, Government Code. Reference: Sections 30512 and 30513, Public Resources Code.

§ 13524. Written Notice.

The executive director shall, prior to the public hearing, provide written notice of the public hearing which shall consist of the following:

(a) a brief description of the proposed LCP or LRDP;

(b) the date, time and place at which the LCP or LRDP will be heard by the Commission;

(c) the general procedure of the Commission concerning hearings and actions on the LCP or LRDP; and

(d) staff summary prepared in accordance with Section 13523.

In order to assure adequate notification, the notice shall be distributed by mail to all members of the Commission, to the local government or governing authority, to all affected cities and counties, and to all other agencies, individuals and organizations who have so requested or who are known by the executive director to have a particular interest in the LCP or LRDP, within a reasonable time but in no event less than 10 calendar days prior to the scheduled public hearing.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30512 and 30513, Public Resources Code; and Section 11125, Government Code.

HISTORY

1. Amendment of subsection (d) filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13525. Distribution of Public Comments.

The executive director shall reproduce and distribute to all members of the Commission and to the affected local government or governing authority the text or summary of all relevant communications concerning the LCP or LRDP that are received in the Commission office prior to the Commission's public hearing and thereafter at any time prior to the vote. When a sizable number of similar communications is received, the texts need not be reproduced but the Commission shall be informed of the substance of the communications; such communications shall be made available at the appropriate Commission office for inspection by any persons during normal working hours.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

§ 13526. Conduct of Initial Hearing.

At the time of the initial hearing on the LCP or LRDP, the executive director of the Commission shall make a brief oral presentation to the Commission. Immediately following the presentation of the executive director, a representative or representatives of the local government or governing authority may make a presentation of the major features of the LCP or LRDP to the Commission. Upon the conclusion of the local government's or governing authority's presentation, interested members of the public and agencies may comment on the proposed LCP or LRDP. The chairperson of the Commission may establish predetermined time limits for all presentations and shall notify all interested parties of such time limits in advance of the hearing, provided that the local government or governing authority shall be allotted at least the same amount of time as the staff presentation.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30512 and 30513, Public Resources Code.

Article 10. Review of Land Use Plans: Determination of Substantial Issue

§ 13528. Staff Recommendation on Substantial Issue.

The LCP summary required pursuant to Section 13523 may be accompanied by the executive director's recommendation as to whether or not specific provisions of the land use plan (or a portion thereof applicable to identifiable geographic areas) raise a substantial issue as to conformity with the policies of Chapter 3 of the California Coastal Act of 1976, pursuant to Public Resources Code, Section 30512(a)(1). The recommendation shall include specific written findings including a statement of fact and legal conclusions and responses to significant environmental points raised. A recommendation on substantial issue may be accompanied by recommended action for certification pursuant to Sections 13530 through 13540.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 21080.5 and 30512, Public Resources Code.

§ 13529. Determination of Substantial Issues.

(a) Not more than 60 days after the land use plan was properly submitted to the Commission, following the close of a public hearing conducted pursuant to the requirements of Section 13526, the Commission shall make a determination on substantial issue as provided in Public Resources Code Section 30512(a)(1).

(b) A majority of Commission members present shall be required to find no substantial issue is raised by a Land Use Plan that has been submitted for Commission review pursuant to Public Resources Code Sec-

tion 30512(a). The motion shall be on the question of whether the Land Use Plan (or portions thereof) raises no substantial issue.

(c) If the Commission determines that the land use plan raises no substantial issue, it shall adopt findings for land use plan certification pursuant to Section 13540(a). A majority of the members prevailing on the motion shall be required to adopt the findings. The executive director shall transmit the findings to the local government within ten (10) days of adoption.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30512, Public Resources Code.

Article 11. Commission Action on Land Use Plans and LRDPs

§ 13530. Additional Hearing on Land Use Plans.

Unless the Commission finds no substantial issue is raised by the land use plan, it shall conduct a public hearing on he specific provisions of the land use plan that it has determined raise a substantial issue as to conformity with the policies of Chapter 3 of the California Coastal Act of 1976. The hearing may be conducted at the same meeting at which substantial issue is determined or at a later meeting. Notice and hearing procedures shall be the same as those set forth in Article 9. Final action shall be within ninety (90) days after submittal of land use plan, pursuant to Public Resources Code Section 30512.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30512, Public Resources Code.

§ 13531. Staff Analysis.

(a) If the vote on the land use plan or LRDP is scheduled for a later meeting than the hearing at which oral testimony is received, the executive director shall promptly perform whatever inquiries, investigations, research conferences, and discussions are required to resolve issues presented by the land use plan or LRDP and to enable preparation of a staff recommendation for the vote. If further information is taken or received by the executive director, it shall be made available in the administrative record of the submittal at the Commission's office and all affected parties shall be given a reasonable opportunity to respond prior to the deadline for the preparation and mailing of the staff recommendation.

(b) The executive director may request of the local government or governing authority any additional information necessary o perform the tasks set forth in subsection (a), and may report to the Commission any failure to comply with such request, including the relationship of the requested information to the findings required by the California Coastal Act of 1976.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30512, Public Resources Code; and Section 65944, Government Code.

§ 13532. Staff Recommendation.

The executive director shall prepare a staff recommendation which shall set forth specific findings, including a statement of facts and legal conclusions as to whether or not the proposed land use plan or LRDP conforms to the requirements of the California Coastal Act of 1976 and of these regulations. The proposed findings shall include any suggested modifications necessary to bring the land use plan or LRDP into compliance with the California Coastal Act of 1976, unless the local government has requested that such modifications not be part of the Commission's action. The proposed findings shall also include any additional documentation, governmental actions or other activity necessary to carry out the requirements of the Coastal Act. In order to assure adequate notification the final staff recommendation shall be distributed to all commissioners, to the governing authority, to all affected cities and counties, and to all other agencies, individuals and organizations who have so requested or who are known by the executive director to have a particular interest in the LCP or LRDP, within a reasonable time but in no event less than 7 calendar days prior to the scheduled public hearing.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30512 and 30605, Public Resources Code.

§ 13533. Comments on Staff Recommendation.

(a) Immediately following the executive director's presentation of the staff recommendation, a representative or representatives of the local government or the governing authority and members of the public and agencies shall have an opportunity to state their views on the recommendation. The chairperson of the Commission may establish predetermined time limits for such presentations. The representative of the local government or governing authority may have a period to respond to questions raised by the Commission.

(b) The staff shall respond to significant environmental points raised during evaluation of the LCP or LRDP. The response may be included within the staff report and shall be distributed to the Commission and the person making the comment. The response shall be available at the hearing on the LCP or LRDP for all persons in attendance.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 21080.5, 30503, and 30512, Public Resources Code.

§ 13535. Withdrawal or Postponement of Action.

(a) The local government or governing authority may withdraw its submission of the land use plan or LRDP at any time up to the commencement of the calling of the roll for a vote on any portion of the land use plan or LRDP. Upon such a request, the submission shall be considered withdrawn and removed from Commission consideration. The local government or governing authority may resubmit the land use plan or LRDP. The Commission shall reschedule the resubmittal at a time when it can be reviewed without adversely affecting previously scheduled LCPs or LRDPs.

(b) The Commission may postpone action on the land use plan or LRDP at any time prior to commencement of the calling of the roll for a vote on any portion of the land use plan or LRDP if it finds that such postponement will not unduly hinder the participation of the public in the deliberations of the Commission and would not result in the action of the Commission taking place after the 90–day time limit specified in Public Resources Code Section 30512 unless the local government or governing authority waives in writing its right to action within that 90–day limit.

(c) The Commission may for good cause extend any time limits within this subchapter for a period not to exceed one year after consultation with the affected local government by a majority vote of the commissioners present.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30512, 30605, and 30517, Public Resources Code.

§ 13536. Amendment Prior to Commission Action.

If the local government or governing authority amends its land use plan or LRDP after submission and prior to the commencement of the calling of the roll for a vote on the land use plan or LRDP as submitted, the Commission shall determine whether or not such amendment is material and includes changes that have not been the subject of public review and comment before the Commission. If the Commission finds that such amendments are minor or that they are material but have been the subject of adequate public comment at the public hearing before the Commission, the Commission shall consider such amendment and take action on the LCP or LRDP as amended rather than the land use plan or LRDP as initially submitted. If the Commission finds that the amendment is material and that the subject matter of the proposed amendment was not reviewed adequately at a prior public hearing, the vote on the land use plan or LRDP shall be continued until after a public hearing on the amended land use plan or LRDP; such hearing shall be scheduled no later than sixty (60) days from the submittal of the amendment. If the next public hearing would occur after the expiration of the ninety (90) day review period set forth in Public Resources Code Section 30512, and the local government or governing authority does not agree in writing to extend the review period, the Commission shall proceed to vote on the land use plan or LRDP as originally submitted.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30503 and 30512, Public Resources Code.

§ 13537. Commission Action on Land Use Plan or LRDP.

(a) The Commission shall take final action upon the land use plan or LRDP within ninety (90) days after submittal unless the local government or governing authority waives in writing the ninety (90) day time limit. No vote shall be taken unless a staff recommendation is prepared and distributed pursuant to Section 13532.

(b) Except as provided in Public Resources Code Section 30512(a)(3), a decision to certify a land use plan or LRDP shall require a majority vote of the appointed membership of the Commission. Where no modifications are proposed, the final motion is on the affirmative question of whether the land use plan or LRDP as submitted should be certified. Where modifications are proposed, the final motions shall be on (1) the affirmative question of whether the land use plan or LRDP, as submitted, should be certified and (2) the affirmative question of whether the land use plan or LRDP, as modified, should be certified. Modifications to the land use plan or LRDP shall be proposed in the staff recommendation. Any vote on the addition or deletion of modifications, including the specific terms or wording of a modification, may be carried by a majority of the commissioners present. Any suggested modifications adopted by the Commission shall be specific and susceptible to objective review and verification by the executive director of the Commission, by the local government or governing authority and by any interested person or public agency. The Commission's certification with suggested modifications shall expire on January 1, 1983 or six months from the date of Commission action, whichever is longer. If the local government, pursuant to Public Resources Code Section 30512, requests the Commission not recommend modifications, the Commission may discuss alternatives in the findings for denial of the land use plan or LRDP as submitted.

(c) If consistent with the staff recommendation and not otherwise specified at the time of the vote, the action taken shall be deemed to have been taken on the basis of the reasons set forth in the staff recommendation and shall thus be deemed to adopt the findings, conclusions, and modifications, if any, recommended by the staff.

(d) Any action of the Commission to certify or to refuse certification of a land use plan or LRDP as submitted by local government or a governing authority shall be final on the day of the Commission vote, notwithstanding a subsequent action of the Commission to adopt findings in support of its decision. An action of the Commission to certify a land use plan or LRDP subject to suggested modifications shall be final on the day the Commission concurs with the executive director's report of the acceptance of the suggested modifications pursuant to Section 13547(c) or the executive director reports the acceptance of the suggested modifications to the Commission pursuant to Section 13544.5(c).

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30512 and 30600.5, Public Resources Code.

§ 13538. Voting Procedure.

(a) Members may vote "yes" or "no" or may abstain from voting.

(b) Any member may change his or her vote prior to the tally having been announced by the chairperson, but not thereafter.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13539. Voting by Members Absent from Hearing.

A member who was absent from any portion of the public hearing may vote on the land use plan or LRDP provided he or she has reviewed the substance of the testimony presented at the prior hearing where the land use plan or LRDP was considered and pertinent materials relating to the land use plan or LRDP submitted to the Commission and has so declared prior to the vote. In the absence of a challenge raised by an interested party, inadvertent failure to make such a declaration prior to the vote shall not invalidate the vote of a member.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30315, Public Resources Code.

§ 13540. Findings for Certification.

Certification of the land use plan or LRDP by the Commission shall be based on specific written findings adopted by majority vote of members prevailing on the motion that the proposed land use plan or LRDP is in conformity with the provisions of the California Coastal Act of 1976, including specific factual findings supporting the following legal conclusions:

(a) the land use plan or LRDP meets the requirements of, and is in conformity with Chapter 3 of the California Coastal Act of 1976;

(b) the land use plan or LRDP contains the specific public access component as required by Public Resources Code Section 30500(a);

(c) the land use plan or LRDP is consistent with any applicable decisions of the Commission that shall guide Commission or local government actions pursuant to Public Resources Code Section 30625(c); and

(d) for LRDPs, approval of the LRDP is consistent with the Commission's responsibilities under the California Environmental Quality Act and any regulations issued pursuant thereto.

(e) the land use plan is in conformance with the policies and requirements of Chapter 3 only to the extent necessary to achieve the basic state goals specified in Public Resources Code Section 30001.5; and

(f) for land use plans, the land use plan meets the requirements of Section 21080.5(d)(2)(i) of the Public Resources Code, which requires that an activity will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Any final action taken by the Commission either certifying or denying certification to a land use plan or LRDP must include written responses to significant environmental points raised during the evaluation of the land use plan.

Within ten (10) working days after Commission action on the land use plan or LRDP, the executive director of the Commission shall transmit a copy of the findings to the local government or governing authority.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30200 and 30512.2, Public Resources Code.

§ 13541. Resubmittal of Land Use Plan If Certification Is Refused.

(a) Resubmittal of a land use plan in response to the Commission's denial of certification shall cause the Commission's prior certification with suggested modifications to expire.

(b) If a local government elects to respond to the Commission's denial of certification by revising its land use plan in a manner other than that suggested by the Commission and resubmitting the revised land use plan to the Commission, preparation, submittal and review of the resubmitted land use plan shall take place in accordance with the provisions of Articles 7–12, except for the provisions related to time periods for hearings and action. Review of the resubmitted land use plan shall take place when the Commission determines that the land use plan can be reviewed without adversely affecting the review of other land use plans previously scheduled.

(c) Following a final decision on the land use plan, no local government may resubmit substantially the same land use plan for a period of six months from the date of the prior final decision. Whether or not a land use plan is "substantially the same" as that upon which a final decision has been rendered shall be decided by the executive director within ten (10) working days of receipt of the submittal. Elimination of suggested modifications shall not be considered a substantial change. Until such a determination is made a resubmittal shall not be deemed submitted within the meaning of Public Resources Code Section 30512. The six month waiting period provided in this section may be waived by the Commission for good cause.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30512, 30513 and 30517, Public Resources Code.

Article 12. Commission Action on Implementation Actions of LCPs

§ 13542. Commission Review and Action.

(a) Commission review of LCP implementing actions shall take place in accordance with the provisions of Articles 9–11, except for Sections 13528, 13529, 13530, and 13537.

(b) The Commission shall take action by a majority vote of those present within sixty (60) days of submittal of the zoning ordinances, zoning district maps, and other implementing actions as provided in Public Resources Code Section 30513. Where no modifications are proposed, the motion is on the affirmative question of whether the ordinance(s), map(s), or other actions do not conform with or are inadequate to carry out the provisions of the certified land use plan. Where modifications are proposed the final motions shall be on (1) the affirmative question of whether zoning actions, as submitted, should be rejected and (2) the affirmative question of whether the zoning actions with modifications as proposed in the staff recommendation should be certified. Any vote on the addition or deletion of modifications including the specific terms or wording of a modification may be carried by a majority of the commissioners present. Any suggested modifications adopted by the Commission shall be specific and susceptible to objective review and verification by the executive director of the Commission, by the local government and by any interested person or public agency. The Commission's certification with suggested modifications shall expire on January 1, 1983 or six months from the date of the Commission's action, whichever is longer.

(c) The standard of review of the implementing actions shall be the land use plan as certified by the Commission. If the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan. However, if the local government elects to revise and resubmit the land use plan in a manner different from that set forth in the suggested modifications of the conditioned certification, the Commission's approval of the implementing actions shall be void. Absent either a certified or conditionally certified land use plan, the Commission may take no action on the implementing actions. However, the Commission may discuss the implementing actions and upon conclusion of the comments by the Commission return the submittal to the local government.

(d) Any final action taken by the Commission either approving or rejecting the LCP implementation actions must include written responses to significant environmental points raised during Commission review.

(e) Categorical exclusions (reviewed by the Commission upon or after certification of the LCP) shall be adopted by the Commission for those categories of development which the Commission certifies as being allowed by right in the local jurisdiction, which have specific development standards (as specified in the LCP) which are handled ministerially by the local government and which comply with Public Resources Code Sections 30610(e) and 30610.5.

(f) Any action of the Commission to certify or to refuse certification of any zoning ordinance, zoning district map or other implementing action as submitted by the local government shall be final on the day of the Commission vote, notwithstanding a subsequent action of the Commission to adopt findings in support of its decision. Any action of the Commission to certify any zoning ordinance, zoning district map or other implementing ordinance subject to suggested modifications shall be final on the day of the Commission concurs with the executive director's report of the local government's acceptance of the suggested modifications pursuant to Section 13544.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections *30513, 30610 and 21080.5, Public Resources Code.*

Article 13. Confirmation of LCP Certification

§ 13544. Effective Date of Certification of a Local Coastal Program.

After the certification or conditional certification of a local coastal program, the executive director of the Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the local government that submitted the local coastal program, and to any interested person(s) or agencies. The certification of a local coastal program resulting in the transfer of coastal development review authority pursuant to Public Resources Code Section 30519 shall not be deemed final and effective until all of the following occur:

(a) The local government with jurisdiction over the area governed by the certified local coastal program, by action of its governing body, acknowledges receipt of the Commission's resolution of certification including any terms or modifications which may have been suggested for final certification; accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications (e.g. implementation of ordinances); and agrees to issue coastal development permits for the total area included in the certified local coastal program;

(b) The executive director of the Commission determines in writing that the local government's action and the notification procedures for appealable development required pursuant to Article 17, Section 2 are legally adequate to satisfy any specific requirements set forth in the Commission's certification order;

(c) The executive director reports the determination to the Commission at its next regularly scheduled public meeting and the Commission does not object to the executive director's determination. If a majority of the commissioners present object to the executive director's determination and find that the local government action does not conform to the provisions of the Commission's action to certify the LCP, the Commission shall review the local government's action and notification procedures pursuant to Articles 9–12 as if it were a resubmittal; and

(d) Notice of the certification of a local coastal program shall be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30519 and 21080.5, Public Resources Code.

§ 13544.5. Effective Date of Certification of a Land Use Plan.

After the certification or conditional certification of a land use plan, the executive director of the Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the local government that submitted the land use plan, and to any interested persons or agencies. The certification of a land use plan resulting in the transfer of coastal development review authority pursuant to Public Resources Code Section 30600.5 shall not be deemed final and effective until all of the following occur:

(a) The local government with jurisdiction over the area governed by the certified land use plan, by action of its governing body, acknowledges receipt of the Commission's resolution of certification including any terms or modifications which may have been required for final certification; accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications (e.g. adoption of plan changes) and agrees to issue coastal development permits for the total area included in the certified land use plan pursuant to Public Resources Code Section 30600.5.

(b) The executive director of the Commission determines in writing that the local government's action is legally adequate to satisfy any specific requirements set forth in the Commission's certification order;

(c) The executive director of the Commission reports the determination to the Commission at its next regularly scheduled public meeting. If the executive director finds that the local government action does not conform to the provisions of the Commission's action to certify the land use plan, the Commission shall review the local government's action and notification procedures pursuant to Articles 9–12 as if it were a resubmittal; and

(d) Notice of the certification of a land use plan shall be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30600.5 and 21080.5, Public Resources Code.

§ 13545. Effect of Final Certification of LCP.

Certification of a local coastal program pursuant to Section 13544 results in the delegation to the local government of a coastal development permit authority over those developments specified in Public Resources Code Section 30519 for the area of the coastal zone governed by the certified local coastal program. No development inconsistent with the certification order may take place unless the order is amended. Appealable developments under Public Resources Code Section 30603, proposed for the area governed by the certified local coastal program shall be subject to the requirements of Article 17, of these regulations.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30600, Public Resources Code.

HISTORY

1. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13545.5. Effect of Final Certification of Land Use Plan.

Upon compliance by a local government with applicable requirements set forth in Public Resources Code Section 30600.5(e) and (f), certification of a land use plan pursuant to Section 13544.5 results in the delegation to the local government of a coastal development permit authority over those developments specified in Public Resources Code Section 30600.5 for the area of the coastal zone governed by the certified land use plan. No development inconsistent with the certification order may take place unless the order is amended.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30600.5, Public Resources Code.

HISTORY

1. Amendment filed 8–2–89; operative 9–1–89 (Register 89, No. 32).

§ 13546. Final Certification and Incomplete Permit Review.

At the time of delegation of coastal development permit authority there may be permit applications that have received local government approval and have not been voted upon by the Commission. The permit applicant may:

(a) return the application to the local government for review under the certified local coastal program pursuant to Article 17, (Section 2), or

(b) proceed with Commission review for consistency with the certified local coastal program. The Commission may determine that the application as filed may require additional review by the local government and, after consultation with and notice to the local government, remand the application for action consistent with the certified local coastal program.

The permit applicant shall not be subject to additional fees or delays as a result of this section except for those required for compliance with the notice and hearing provisions of Article 17 of these regulations.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30600(a), Public Resources Code.

Article 14. Confirmation of Final and Effective LRDP Certification and Subsequent Review of Development Projects

§ 13547. Effective Date of Certification.

After the certification of the LRDP, the executive director of the Commission shall transmit copies of the resolution of certification and suggested modifications to the governing authority, and to any interested persons or agencies. The certification of the LRDP resulting in the abbreviated review procedure provided in Section 13550 pursuant to Public Resources Code Section 30606, shall not be deemed final and effective until all of the following occur:

(a) The governing authority acknowledges receipt of the Commission's resolution of certification including any terms or modifications which may have been required for final certification; and the Board of Regents or Board of Trustees accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications.

(b) The executive director of the Commission determines in writing that the action of the governing authority, or the Board of Regents or Board of Trustees where appropriate, and the notification procedures of the LRDP for development projects required pursuant to Section 13511(e) are legally adequate to satisfy any specific requirements set forth in the Commission's certification order; and

(c) The executive director reports the determination to the Commission at its next regularly scheduled public meeting and the Commission does not object to the executive director's determination. If a majority of the commissioners present object to the executive director's determination and finds that the governing authority's action does not conform to the provisions of the Commission's action to certify the LRDP, the Commission shall review the governing authority's action and notification procedures pursuant to Articles 9–12 as if it were a resubmittal.

NOTE: Authority cited: Section 30605, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13548. Effect of Final Certification of LRDP.

After certification of the LRDP for an educational facility has become final, the governing authority may undertake or authorize any development project for such educational facility within the coastal zone without a coastal development permit obtained pursuant to Sections 13050 to 13173 if:

(1) the governing authority provides timely notice of the impending development as provided in Section 13549, and

(2) the proposed development is found to be consistent with the certified LRDP pursuant to Section 13550.

If the Commission fails to act upon the notice of the impending development within thirty (30) days after the notice is filed in the office of the Commission, the development is deemed consistent with the certified LRDP.

NOTE: Authority cited: Section 30605, Public Resources Code. Reference: Section 30605, Public Resources Code.

§ 13549. Notice of the Impending Development.

(a) At least thirty (30) days prior to beginning construction for any development, the governing authority shall notify in writing the following parties of the nature and location of the impending development: the Commission, contiguous local governments, owners of each parcel of record within 100 feet of the proposed development, persons residing within 100 feet of the proposed development, and all other interested persons

and agencies who have requested such notice. The governing authority shall post conspicuous notice of such impending development at the proposed site. Notice to the Commission, and interested persons and agencies who have so requested shall be accompanied by sufficient supporting information to allow determination of whether such development is consistent with the certified LRDP.

(b) Within ten (10) days of the receipt of a notice of the impending development, the executive director shall review the notice. If there is insufficient supporting information to determine whether the proposed development is consistent with the certified LRDP, the executive director shall inform the governing authority of what further information is needed to make such determination. The notice shall be deemed filed when all necessary supporting information has been received by the executive director.

(c) No construction shall commence until at least thirty (30) days after the notice is filed in the office of the Commission.

(d) This section shall not apply to those development projects defined pursuant to Section 13511(g).

NOTE: Authority cited: Section 30605, Public Resources Code. Reference: Section 30606, Public Resources Code.

§ 13550. Commission Review of Development Projects.

(a) Categories of development defined in a certified LRDP pursuant to Section 13511(g) shall not be reviewable by the Commission.

(b) Within thirty (30) days after the filing of the notice of the impending development, the executive director shall report in writing to the Commission the pendency of the proposed development. The report shall include a description sufficient to allow the Commission to understand the location, nature, and extent of the proposed development, and a discussion and recommendation regarding the consistency of the proposed development with the certified LRDP. Copies of the report shall be available at the meeting and, if possible within the time available, shall have been mailed to the Commission, the governing authority and those persons known by the executive director to be interested in receiving such notification.

(c) Proposed developments which in the opinion of the executive director of the Commission are de minimus with respect to the purposes and provisions of the certified LRDP may be scheduled for Commission review at one public hearing during which all such items may be taken up as a single matter. This procedure shall be known as the Consent Calendar. The procedures governing such Consent Calendar shall be comparable to the procedures set forth in Sections 13101–13103.

(d) Within thirty (30) days of the filing of the notice and after a public hearing the Commission shall, by a majority of its membership present, determine whether the proposed development is consistent with the certified LRDP and whether conditions are required in accordance with the provisions of Public Resources Code Sections 30605–30607 and 30607.1. If the Commission determines that conditions are required to render the proposed development consistent with the certified LRDP, the Commission shall schedule a public hearing on the proposed conditions no later than twenty–one (21) days after the close of the hearing that determined consistency with the LRDP. No construction shall commence until after the Commission votes to impose any condition necessary to render the proposed development consistent with the certified LRDP. The hearing procedures governing the Commission's determinations pursuant to this subsection shall be in conformance with Section 13064–13096.

NOTE: Authority cited: Section 30605, Public Resources Code. Reference: Section 30606, Public Resources Code.

Article 15. Amendments to Certified LCPs and LRDPs

§ 13551. Local Government Resolution.

(a) An amendment to a certified LCP or LRDP shall be accepted for filing by the Commission if the amendment is submitted pursuant to a resolution adopted in accordance with the provisions of Public Resources Code Section 30510(a) or is proposed pursuant to Public Resources Code Section 30515.

(b) A local government or governing authority may submit a proposed amendment either (1) as an amendment that will take effect automatically upon Commission approval pursuant to Public Resources Code Sections 30512, 30513, and 30519, or (2) as an amendment that will require formal local government adoption after Commission approval.

Under either of the alternative procedures, the requirements of Sections 13544, 13544.5 or 13547 must be fulfilled following Commission approval of the amendment. For purposes of this Article, certified LCP or LRDP includes certified land use plan, LCP or LRDP or any portion thereof.

NOTE: Authority cited: Sections 30501 and 30605, Public Resources Code. Reference: Sections 30514, 30605, and 30510, Public Resources Code.

§ 13552. Contents of LCP or LRDP Amendment Submittal.

The LCP or LRDP amendment submittal shall include:

(a) A summary of the measure taken to provide the public and affected agencies and districts maximum opportunity to participate in the LCP or LRDP amendment process, pursuant to Section 13515 and Public Resources Code Section 30503; a listing of members of the public, organizations, and agencies appearing at any hearing or contacted for comment on the LCP or LRDP amendment; and copies or summaries of significant comments received and of the local government or governing authority's response to the comments.

(b) All policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. Written documents should be readily reproducible. An amendment to a land use plan or LRDP shall include, where applicable, a readily identifiable public access component as set forth in Section 13512.

(c) A discussion of the amendment's relationship to and effect on the other sections of the certified LCP or LRDP.

(d) An analysis that meets the requirements of Section 13511 or an approved alternative pursuant to Section 13514 and that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act.

(e) Any environmental review documents, pursuant to CEQA, required for all or any portion of the amendment to the LCP or LRDP.

(f) An indication of the zoning measures that will be used to carry out the amendment to the land use plan (unless submitted at the same time as the amendment to the land use plan).

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Sections 30510 and 30514, Public Resources Code.

§ 13553. Review of Filing.

An amendment to a certified LCP or LRDP together with all necessary attachments and exhibits shall be deemed "submitted" after having been received and found by the executive director of the Commission to be in proper order and legally adequate to comply with Public Resources Code Section 30510(b). Said review shall be completed within a reasonable time, but unless there are unusual circumstances, no later than ten (10)

working days after the date it is received in the Commission offices during normal working hours. The executive director shall cause a date of receipt stamp to be affixed to all LCP or LRDP submissions on the day they are so received and a stamp of the date of submittal on the day they are found to be properly submitted. If the executive director determines that the materials received are not sufficient to satisfy the requirements of Public Resources Code Section 30510(b), the executive director shall transmit to the local government or governing authority specific written comments regarding the inadequacy of the submission no later than the aforementioned ten (10) working days. Any disagreement between the executive director and the local government or governing authority as to information requirements may be resolved by the Commission. If the amendment to the LCP or LRDP is found to be properly submitted, the executive director shall immediately notify the local government or governing authority that submitted the LCP or LRDP amendment.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30514, Public Resources Code; and Section 65943, Government Code.

§ 13554. Minor Amendment, Definition.

Pursuant to Public Resources Code Section 30514(c) and for purposes of this Article, a minor amendment to an LCP or LRDP includes but is not limited to, the following:

(a) changes in wording which make the use as designated in the zoning ordinances, zoning district maps or other implementing actions more specific and which do not change the kind, location, intensity, or density of use and which are found by the executive director of the Commission or the Commission to be consistent with the land use plan as certified by the Commission.

(b) for annexed or detached areas, certification of zoning ordinances, zoning district maps or other implementing actions where either:

(1) the certified land use plan and zoning designations of the city and county jurisdictions fo the geographic area are equivalent; or

(2) the Commission has certified proposed pre–annexation zoning for the annexing jurisdiction.

(c) change in the notification and hearing procedures that is consistent with the requirements of the Coastal Act.

(d) for land use plans:

(1) revisions or deletion of housing policies certified pursuant to Public Resources Code Section 30213 prior to January 1, 1982.

(2) correction, reorganization, revisions, or deletion of certified language which when taken together does not change the kind, location, intensity or density of use or modify the resource protection measures for any area or property.

(3) additions or revisions to certified policies which impose further conditions, restriction or limitations on any use which might adversely affect the resources of the coastal zone, if those amendments do not conflict with any policy of Chapter 3 of the Coastal Act or with any other certified land use plan policy.

(e) changes in the kinds, location, intensity or density of uses covering areas specifically certified by the Commission as acceptable alternative land uses that become effective upon the occurrence of specific events authorized in a certified LCP or LRDP, such as annexations or the availability of water or sewer services.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30514, Public Resources Code.

§ 13555. Designation of Amendment as Minor.

(a) The executive director of the Commission or the Commission may determine whether or not a proposed amendment is minor in nature. If the executive director determines the proposed amendment is minor, notice of such determination including a summary of procedures set forth in this Article shall be mailed to all parties the executive director has reason to know may be interested in the amendment to the LCP or LRDP. The executive director shall report in writing to the Commission at the next meeting, his or her determination and objections to the determination, if any, that have been received within ten (10) working days of the posting of notice. The report shall include sufficient description of the proposed amendment to allow the Commission to understand the proposal. If one–third of the appointed members of the Commission requests, the determination of minor amendment shall not become effective and the amendment shall be processed in accordance with Section 13555(b). Proposed amendments that are designated as minor amendments by the executive director with concurrence by the Commission or the Commission shall take effect upon completion of the requirements of Section 13547.

(b) If the executive director or the Commission determine that the proposed amendment is not minor, the application shall be processed by the Commission after notice to all parties the executive director has reason to know may be interested in the matter. Amendments that are not designated minor in nature shall be subject to the provisions of this Article and Articles 9–12.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30514, Public Resources Code.

Article 16. Environmental Impact Review—Local Coastal Programs and Long Range Development Plans

§ 13557. Review and Comments on Draft Environmental Documents.

(a) Any local government or governing authority intending to submit an LCP or LRDP for certification shall submit any draft environment documents, including an Initial Environmental Study, Draft Environmental Impact Report, or Draft Negative Declaration concerning the LCP or LRDP to the office of the Commission as soon as practicable after such are prepared.

(b) The executive director shall review such documents, determine what comments should be made on behalf of the Commission, and forward such documents to the local government or governing authority. The Commission at its discretion, may hold a public hearing on any environmental document submitted and direct the staff to make whatever comments, or to obtain whatever additional information, the Commission deems appropriate.

With regard to LCPs, if the draft environmental impact report is submitted in conjunction with the preliminary review procedure set forth in Section 13517, the draft environmental documents may be submitted together with the proposed local coastal program as a single document, and the Commission may hold a hearing on the draft environmental document(s) at the same time as the advisory review hearing.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 21160, Public Resources Code.

§ 13558. Effect of Comments and Preliminary Review by the Commission.

Comments on environmental documents that are submitted by the Commission or the executive director pursuant to the California Environmental Quality Act are intended to aid the local government or governing authority in preparing adequate environmental documents. They do not indicate what action the Commission may take with regard to certification; nor do they preclude the Commission from requiring supplemental environmental information in the course of the review process.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 30500(c), Public Resources Code.

§ 13559. Submission of Final Environmental Documents for LRDPs.

At the time the governing authority submits its LRDP pursuant to Section 13518, it shall also submit either a final Environmental Impact Report or a negative Declaration. For purposes of the section and to avoid unnecessary duplication, the Environmental Impact Report and the LRDP may be submitted as a single document if such single document meets the substantive and procedural requirements of both the California Coastal Act of 1976 and the California Environmental Quality Act. Any public hearing on the LRDP may be combined with required public hear-

ings for the review of environmental documents pursuant to the California Environmental Quality Act.

NOTE: Authority cited: Section 30501, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 17. Local Coastal Program Implementation Regulations

§ 13560. Scope of Article.

The provisions of this Article shall constitute minimum standards of notice and hearing requirements for local governments and for the Commission in reviewing development projects after certification of a local coastal program.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30600, Public Resources Code.

HISTORY

1. New Article 17 (Sections 13560–13574, not consecutive) filed 1–17–83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 4).

§ 13563. Existing Local Procedures.

Existing local government notice and hearing procedures which are in substantial compliance with the provisions of these regulations may be reviewed and certified by the Commission as part of the local coastal program.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30620.6, Public Resources Code.

§ 13565. Notice of Appealable Developments.

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information:

(1) a statement that the development is within the coastal zone;

(2) the date of filing of the application and the name of the applicant;

(3) the number assigned to the application;

(4) a description of the development and its proposed location;

(5) the date, time and place at which the application will be heard by the local governing body or hearing officer;

(6) a brief description of the general procedure of local government concerning the conduct of hearing and local actions;

(7) the system for local and Coastal Commission appeals, including any local fees required.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30006 and 30600, Public Resources Code.

§ 13566. Public Hearing on Appealable Developments.

At least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns regarding the project. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13565. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30006 and 30600, Public Resources Code.

§ 13567. Notice of Local Government Action When Hearing Continued.

If a decision on a development permit is continued by the local government to a time which is neither (a) previously stated in the notice provided pursuant to Section 13565, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30006 and 30600, Public Resources Code.

§ 13568. Notice of Non–Appealable Developments.

(a) Notice of developments within the coastal zone that require a public hearing under local ordinance, but which are not appealable pursuant to Public Resources Code Section 30603 (and which are not categorically excluded) shall be provided in accordance with existing local government notice requirements which shall provide at a minimum:

Notice of developments shall be given at least ten (10) calendar days before a hearing in the following manner:

(1) if the matter is heard by the Planning Commission (city or county) notice shall be published in a newspaper of general circulation or (if there is none) posted in at least three public places in the local jurisdiction;

(2) notice by first class mail to any person who has filed a written request therefore,

(3) notice by first class mail to property owners within 300 feet.

(4) notice by first class mail to residents within 100 feet of the proposed project.

(5) notice by first class mail to the Commission.

(6) the notice shall contain a statement that the proposed development is within the coastal zone.

The local government may, instead, elect to provide notice in accordance with Section 13565.

(b) Notice of developments within the coastal zone which are not appealable pursuant to Public Resources Code Section 30603 and which do not require a public hearing under local ordinance (and which are not categorically excluded) shall be provided as follows:

Within ten (10) calendar days of accepting an application for a non–appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the local decision on the application, the local government shall provide notice, by first class mail, of pending development approval. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed, and to the Commission. The notice shall contain the following information:

(1) a statement that the development is within the coastal zone;

(2) the date of filing of the application and the name of the applicant;

(3) the number assigned to the application;

(4) a description of development and its proposed location;

(5) the date the application will be acted upon by the local governing body or decision–maker;

(6) the general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision;

(7) a statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30006 and 30600, Public Resources Code.

§ 13569. Determination of Applicable Notice and Hearing Procedures.

The determination of whether a development is categorically excluded, non–appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This

determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non–appealable or appealable:

(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non–appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;

(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non–appealable or appealable:

(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30600, Public Resources Code.

§ 13570. Finality of Local Government Action.

A local decision on an application for a development shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted as defined in Section 13573.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30603, Public Resources Code.

§ 13571. Final Local Government Action—Notice.

(a) Notice After Final Local Decision. (This section shall not apply to categorically excluded developments.) Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13570, the local government shall notify by first class mail the Commission and any persons who specifically requested notice of such action by submitting a self–addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

(b) Failure to Act—Notice.

(1) Notification by Applicant: If a local government has failed to act on an application within the time limits set forth in Government Code Sections 65950–65957.1, thereby approving the development by operation of law, the person claiming a right to proceed pursuant to Government Code Sections 65950–65957.1 shall notify, in writing, the local government and the Commission of his or her claim that the development has been approved by operation of law. Such notice shall specify the application which is claimed to be approved.

(2) Notification by Local Government: When a local government determines that the time limits established pursuant to Government Code Sections 65950–65957.1 have expired, the local government shall, within seven (7) calendar days of such determination, notify any person entitled to receive notice pursuant to Section 13571(a) that the application has been approved by operation of law pursuant to Government Code Sections 65950–65957.1 and the application may be appealed to the Commission pursuant to Section 13110 et seq. (This section shall apply equally to a local government determination that the project has been approved by operation of law and to a judicial determination that the project has been approved by operation of law.)

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30620 and 30625, Public Resources Code.

§ 13572. Local Government Action—Effective Date.

A local government's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless either of the following occur:

(a) an appeal is filed in accordance with Section 13111;

(b) the notice of final local government action does not meet the requirements of Section 13571;

When either of the circumstances in Section 13572(a) or (b) occur, the Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the local government and the applicant that the effective date of the local government action has been suspended.

NOTE: Authority cited: Section 30333 and 30620, Public Resources Code. Reference: Section 30603, Public Resources Code.

§ 13573. Exhaustion of Local Appeals.

(a) An appellant shall be deemed to have exhausted local appeals for purposes of Section 13111 and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the local appellate body (bodies) as required by the local government appeal procedures; except that exhaustion of all local appeals shall not be required if any of the following occur:

(1) The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.

(2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.

(3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.

(4) The local government jurisdiction charges an appeal fee for the filing or processing of appeals.

(b) Where a project is appealed by any two (2) members of the Commission, there shall be no requirement of exhaustion of local appeals. Provided, however, that a local government may provide, by ordinance, that notice of commissioner appeals may be transmitted to the local appellate body (which considers appeals from the local body that rendered the final decision), and the appeal to the Commission may be suspended pending a decision on the merits by that local appellate body. If the decision of the local appellate body modifies or reverses the previous decision, the commissioners shall be required to file a new appeal from that decision.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Sections 30603 and 30625, Public Resources Code.

§ 13574. Procedures for Open Space Easements and Public Access Documents.

All coastal development permits subject to conditions of approval pertaining to public access and open space or conservation easements shall be subject to the following procedures:

(a) The executive director of the Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.

(1) Upon completion of permit review by the local government and prior to the issuance of the permit, the local government shall forward a copy of the permit conditions and findings of approval and copies of the legal documents to the executive director of the Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;

(2) The executive director of the Commission shall have fifteen (15) working days from receipt of the documents in which to complete the review and notify the applicant of recommended revisions if any;

(3) The local government may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the local government within that time period;

(4) If the executive director has recommended revisions to the applicant, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the executive director; or

(b) If a local government requests, the Commission shall delegate the authority to process the recordation of the necessary legal documents to the local government if the local government identifies the department of the local government or public agency or private association that has the resources and authorization to accept, open and operate and maintain the accessways and open space/conservation areas required as a condition of approval of coastal development permits subject to the following: Upon completion of the recordation of the documents the local government shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space conditions to the executive director of the Commission.

NOTE: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30530, Public Resources Code.

Article 18. Map Requirement and Boundary Determination Criteria

§ 13576. Map(s) of Areas of Commission Permit and Appeal Jurisdiction.

(a) In conjunction with final Local Coastal Program certification or the delegation of coastal development permit authority pursuant to Public Resources Code Section 30600.5, whichever occurs first, the Commission shall, after public hearing, adopt a map or maps of the coastal zone of the affected jurisdiction that portrays the areas where the Commission retains permit authority pursuant to Public Resources Code Sections 30603 (a) (1) and (a)(2), or 30600.5 (d). These maps shall be drawn based on the criteria for permit and appeal boundary determinations, set forth in Section 13577 below, and will serve as the official maps of the Commission's permit and appeal jurisdiction. The Commission, in consultation with the local government, shall update these maps from time to time, where changes occur in the conditions on which the adopted maps were based, or where it can be shown that the location of the mapped boundary does not adequately reflect the intended boundary criteria. Revisions of the adopted maps shall be based on precise boundary determinations made using the criteria set forth in Section 13577. The revised maps shall be filed with the affected jurisdiction within 30 days of adoption by the Commission. In addition, each adopted map depicting the permit and appeal jurisdiction shall include the following statement:

"This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Sections 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission"

(b) In the case of local governments which have received Commission approval of their Phase III (implementation) Work Program and Budget prior to January 1, 1980, the permit and appeal area maps shall be adopted by the Commission prior to the certification becoming effective pursuant to Section 13547 of the Commission's regulations.

(c) Any request for a written determination for either (1) interpretation or revision of any boundary shown in any permit and appeal jurisdiction map approved pursuant to subsection (a), or (2) a determination of the precise location of a particular parcel or area of land in relation to any boundary shown on any such map, shall be accompanied by payment of the fee set forth in Section 13055(b)(6).

NOTE: Authority cited: Sections 30333, 30501 and 30620.6, Public Resources Code. Reference: Sections 30519 and 30603, Public Resources Code.

HISTORY

1. New subsection (c) and amendment of NOTE filed 3–14–2008; operative 3–14–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 11).

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep–water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre–dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

(c) Estuaries. Measure 300 feet landward from the mean high tide line of the estuary. For purposes of this section, an estuary shall be defined as a coastal water body, usually semi–enclosed by land, having open, partially obstructed, or intermittent exchange with the open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. The salinity level my be periodically increased to above that of the open ocean due to evaporation. The mean high tide line shall be defined

as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station.

(d) Tidelands. Tidelands shall be defined as lands which are located between the lines of mean high tide and mean low tide.

(e) Submerged Lands. Submerged lands shall be defined as lands which lie below the line of mean low tide.

(f) Public Trust Lands. Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

(g) Beaches. Measure 300 feet landward from the inland extent of the beach. The back beach, or dry beach, if it exists, shall be included. The inland extent of the beach shall be determined as follows:

(1) from a distinct linear feature (e.g., a seawall, road, or bluff, etc.);

(2) from the inland edge of the further inland beach berm as determined from historical surveys, aerial photographs, and other records or geological evidence; or

(3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence.

(h) Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean:

(1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and

(2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

(2) Whenever no public road can be designated which conforms to all provisions of (i)(1) above, and a public road does exist, which conforms to all provisions of (i)(1) except (i)(1)(v), the effect of designating the first public road paralleling the sea shall be limited to the following:

(A) all parcels between the Pacific Ocean and such other public road; and

(B) those parcels immediately adjacent of the sea inland of such other public road.

(3) Where the Commission determines that the designation of the "first public road paralleling the sea" results in the inclusion of areas within the permit and appeal jurisdiction where the grounds for an appeal set forth in Public Resources Code Section 30603(b) are not an issue, the Commission may take action to limit the geographic area where developments approved by a local government may be appealed to the Commission, to that area where any such grounds are, in fact, an issue.

NOTE: Authority cited: Sections 30501 and 30620.6, Public Resources Code. Reference: Sections 30519 and 30603, Public Resources Code.

HISTORY

1. Amendment of subsection (i)(2) filed 8-2-89; operative 9-1-89 (Register 89, No. 32).

Subchapter 6. Ports

Article 1. Scope and Jurisdiction

§ 13600. Ports Covered by This Subchapter.

The provisions of this subchapter are promulgated pursuant to Chapter 8 of the California Coastal Act of 1976. That Chapter and the organizational and procedural provisions of Chapters 1, 2, 3, and 5 of these regulations as applicable shall govern any development, the issuance of any coastal development permit, and the certification of any port master plan within the legal geographical boundaries of those portions of the Ports of Hueneme, Long Beach, Los Angeles, and San Diego Unified Port District within the coastal zone except as provided herein.

NOTE: Authority cited: For Subchapter 6 (Sections 13600–13648, not consecutive) Sections 30605, 30501 and 30333, Public Resources Code. Reference: Sections 30605 and 30606, Public Resources Code.

HISTORY

1. New Chapter 8 (Subchapter 2, Sections 13600–13648, not consecutive) filed 2–28–77 as an emergency; effective upon filing (Register 77, No. 10).
2. Certificate of Compliance filed 4–29–77 (Register 77, No. 18).
3. Redesignation of Subchapter 2 (Sections 13600–13648) to Subchapter 6 (Sections 13600–13648) filed 6–21–78; effective thirtieth day thereafter (Register 78, No. 25).

§ 13601. Port Boundary Maps.

(a) Port boundary maps adopted pursuant to Section 30710 may be amended from time to time by the Commission only for the following purposes: (1) to correct a clerical mistake or other similar error made in preparing the original map, (2) to enlarge the areas identified as wetlands, estuaries, or recreation areas but only at the request of the Port, or (3) to modify the legal geographical boundary if such boundary is changed.

(b) Amendments to port boundary maps and supporting material shall be transmitted to each port, the district office, other known interested persons and shall be made available for inspection by the public at least seven (7) working days prior to the public hearing conducted pursuant to subsection (c) below. Where reproduction of such map amendments would result in unnecessary delays, distribution of summary maps may be substituted.

(c) Unless additional time is requested by the governing body of any port to supplement the material prepare by the executive director, the commission shall, after reviewing the material prepared by the executive director, and after notice is provided in accordance with Section 13063 at public hearing adopt, certify and file with each port district the amendments to such port boundary maps.

(d) The preparation and/or approval of any maps pursuant to Public Resources Code, Section 30710 and this section is for planning purposes only and not to establish rights of ownership.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30710, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 2. Delineation of an Area as a Wetland, Estuary, or Existing Recreation Area

§ 13610. Effect of Delineation as a Wetland, Estuary, or Existing Recreation Area.

(a) Until such time as the commission certifies a plan for an area identified as a wetland, estuary, or existing recreation area pursuant to Public Resources Code, Section 30710, any development proposed to be undertaken in such an area shall require a coastal development permit as provided in Chapter 7 of the California Coastal Act of 1976 and these regulations.

(b) A port governing body with jurisdiction over an area identified as a wetland, estuary, or existing recreation area pursuant to Public Resources Code, Section 30710 may choose to either (1) submit a plan for such area to the commission in conjunction with the proposed port master plan pursuant to Public Resources Code, Section 30711, and the procedures for reviewing a port master plan set forth in Article 4 of this subchapter; or (2) submit a plan for such area for inclusion in a local government's local coastal program pursuant to Public Resources Code, Section 30519(b), and the procedures for reviewing a local coastal program set forth in these regulations. Certification of a plan for a wetland, estuary, or existing recreation area identified pursuant to Public Resources Code, Section 30710 shall be governed by policies of Chapter 3 of the California Coastal Act. After final certification of a plan for such an area, any proposed development in the area governed by the plan shall be subject to the procedures governing review of development following certification of a local coastal program as set forth in Public Resources Code, Section 30603 and these regulations.

Article 3. Coastal Development Permits Prior to Certification

§ 13620. Pre–Certification Coastal Development Permits.

Prior to certification of a port master plan, any person wishing to undertake a development within the geographical boundaries of a port governed by this subchapter shall obtain a coastal development permit from the commission. Any such development shall be governed by the policies of Chapter 8 of the California Coastal Act of 1976, except in the case of a delineated wetland, estuary, or existing recreation area on the adopted Port Boundary Map or a development identified in Public Resources Code, Section 30715(a)–(f) which shall be governed by the policies of Chapter 3 of the California Coastal Act of 1976.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30715, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 4. Preparation and Review of Port Master Plans

§ 13625. Contents of a Master Plan.

In order for the commission to be able to certify a port master plan, the plan shall include the following:

(a) Where a port governing body elects, pursuant to Section 13610(b), to include an area identified as a wetland, estuary, or existing recreation area in a port master plan, rather than submit the plan for such an area for inclusion in a local coastal program, the plan for such an area shall indicate how it conforms with the policies of Chapter 3 of the California Coastal Act of 1976 and its adequacy to carry out said policies.

(b) Pursuant to Public Resources Code, Section 30711(a)(4), all proposed developments listed as appealable under Public Resources Code, Section 30715 shall be described in sufficient detail to allow the commission to determine their consistency with the policies of Chapter 3 of the California Coastal Act of 1976. Provided, however, that in the event a proposed development has not reached the stage where it is in sufficient detail to meet his requirement, the port governing body may submit a plan that is comparable to a public works plan under Public Resources Code, Section 30605 and that meets the requirements of Public Resources Code, Section 30605 and these regulations; any project undertaken pursuant to a plan approved in this manner shall meet the requirements of Public Resources Code, Sections 30605, 30606, 30607, and 30607.1.

(c) All other requirements set forth in Chapter 8 of the California Coastal Act of 1976. Where a proposed development described in the master plan has not reached a stage of project definition that would allow the commission to determine consistency with the requirements of Chapter 8 of the California Coastal Act of 1976, the port governing body may request that the commission employ the public works plan procedure set forth in subsection (b) above but subject to the policies of Chapter 8 of the California Coastal Act of 1976 rather than the policies of Chapter 3.

(d) Copies of written comments on the master plan received from any person any responses thereto and a detailed summary of oral testimony given at any hearing on the master plan.

§ 13626. Notice of Completion.

After completion of a draft Master Plan or an amendment of a Master Plan, the Port governing body shall issue a notice of completion which contains information which, in the judgment of the executive director of the commission, is of sufficient detail to allow the commission to determine the port governing body's compliance with the provisions of Public Resources Code, Sections 30712 and 30713. The notice of completion shall include a listing of the members of the public, organizations and governmental agencies contacted for comment on the Port Master Plans along with copies of their comments, if any. As used in these regulations, notice of completion means that notice pursuant to Public Resources Code, Sections 30712 and 30713.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30712, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13627. Notice and Public Hearings.

After publication and submission of the notice of completion pursuant to Public Resources Code, Sections 30712 and 30713, the port governing body shall, after notice distributed in a manner comparable to that provided in Section 13059, hold a public hearing or hearings on a draft master plan adopted pursuant to Public Resources Code, Section 30712 as provided in Public Resources Code Section 30712. Upon the publication or submission of the notice of completion the governing body of the port shall make copies of such plans available upon request to other interested persons. When such master plans cannot be readily duplicated, a detailed summary shall be made available for public distribution and the port shall make complete copies of such plans available for inspection in a reasonable manner by the public. Upon the publication or submission of the notice of completion, the port governing body shall submit copies of the plans to the commission; if the port governing body so desires, such plans may be combined with the draft environmental review documents as provided in Section 13640. Public hearings required pursuant to Public Resources Code, Sections 30712 and 30713 may be combined with any applicable hearings on draft Environmental Impact Reports held pursuant to the California Environmental Quality Act.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30712 and 30713, Public Resources Code.

HISTORY
1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13628. Submission of Master Plan by Port.

(a) No master plan shall be deemed submitted to the commission for the purposes of Public Resources Code, Section 30714 until the executive director certifies that it contains or is accompanied by the following:

(1) A notice of completion conforming to Section 13626.

(2) Certification of the conformance to the publication on notice and hearing requirements of Section 13627.

(3) A resolution adopted by the port governing body adopting such plan for the purpose of authorizing its submission to the commission.

(4) Comments and testimony received during the public hearings and response thereto. Where applicable, such comments and responses may be combined with those in subsection (6) below.

(5) Such supporting factual data as necessary for the commission to review the adequacy of the plan to carry out the policies of the California Coastal Act of 1976.

(6) A draft Environmental Impact Report that contains the responses to public comments made during the period for public comment as provided in the California Environmental Quality Act.

(b) The executive director of the commission shall determine whether the material submitted or resubmitted conforms to the requirements of subsection (a) within ten (10) working days of receiving such material. Upon the determination by the executive director that such material is sufficient, the master plan shall be deemed submitted to the commission for the purposes of Public Resources Code, Section 30714. If the executive director determines that such material is not sufficient, the executive director shall inform the port governing body of the determination and the reasons for the determination.

§ 13629. Informal Commission Review.

A port governing body shall be entitled to one preliminary plan review prior to formal submittal. The procedures for conducting the informal review shall be the same as those set forth in Section 13218, governing the informal review of urban exclusion requests. Such review should be consolidated with any commission review of an Impact Report as provided in Section 13645(c).

HISTORY
1. Amendment filed 6–10–77; effective thirtieth day thereafter (Register 77, No. 24).

§ 13630. Public Hearings.

At least one public hearing shall be held by the commission after providing notice as provided in Section 13063 on any port master plan submitted pursuant to Public Resources Code, Section 30714 prior to taking final action. No public hearing shall be held prior to the 21st day after submission of the plan. Where practicable, public hearings on a port master plan should be held near the port involved.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30714, Public Resources Code.

HISTORY
1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13631. Staff Reports.

Prior to the public hearing provided in Section 13630, the executive director shall provide a summary of the port master plan and the issues presented by such plan to the commission and parties that the executive director has reason to know are interested in the plan. Such report may also contain an initial recommendation as to whether the master plan should be certified in whole or in part or rejected in whole or in part in its form as submitted.

§ 13632. Certification of Port Master Plan.

(a) After the close of the public hearing, the executive director shall make a written recommendation to the commission as soon as practicable as to whether the port master plan should be certified in whole or in part or rejected in whole or in part. Such recommendation shall be provided to parties that the executive director has reason to know are interested in the matter prior to the vote by the commission in the same manner as provided in Section 13059.

(b) The recommendation of the executive director shall be written and shall contain proposed findings of fact and conclusions of law to support the recommendation.

(c) The commission shall, by a majority of the members of the Commission present, take action on the port master plan within ninety days of submission pursuant to Public Resources Code, Section 30714.

(d) The commission shall approve a port master plan only if the commission finds that sufficient information has been submitted to allow the commission to determine the adequacy and conformity of the proposed plan(s) with the applicable policies of the California Coastal Act of 1976, pursuant to the requirements of Public Resources Code, Section 30711 and of Section 13625 of these regulations, and that the master plan fulfills the requirements of Public Resources Code, Section 30714(a) and (b). Further, the commission shall make any findings required pursuant to the California Environmental Quality Act. Where a port master plan includes a wetland, estuary or existing recreation area pursuant to Section 13610(b)(1), the commission shall base its findings on adequacy and conformity with the policies of Chapter 3 of the California Coastal Act of 1976.

(e) The certification of a port master plan shall not become effective until the port governing body takes formal action adopting such plan as certified by the commission and the commission has received notice of such action, including the final EIR adopted for such action and the commission has accepted the formal action as consistent with its certification.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30714, Public Resources Code.

HISTORY
1. Amendment of subsections (a) and (c) filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13633. Withdrawal of Master Plan or Postponement of Action on Master Plan.

(a) At any time before the Commission commences calling the roll for a vote on a port master plan, the port governing body may withdraw the plan from consideration. Withdrawal must be in writing or stated on the record and does not require Commission concurrence. Resubmission of the port master plan pursuant to Public Resources Code Section 30714 shall not take place for 45 days following the request to withdraw.

(b) In addition to the procedures set forth in Section 13633(a), the port governing body may request the Commission to postpone consideration of the plan. Where the port governing body determines that it is not prepared to respond to the staff recommendation at the meeting for which the vote is scheduled, the port governing body shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. Such a request shall be in writing or stated on the record and shall expressly include a waiver of any applicable time limits for Commission action on the plan.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30714, Public Resources Code.

HISTORY
1. Amendment filed 6–16–82; effective thirtieth day thereafter (Register 82, No. 25).

§ 13634. Amendment of Port Master Plan Prior to Commission Action.

If the governing body of a port amends its master plan after submission of its plan pursuant to Public Resources Code Section 30714 and prior to the commencement of the calling of the roll for a vote on any portion of the master plan, the executive director shall determine if such amendment is material and includes changes that have not been the subject of public review and comment before the Commission. If the executive director finds that both of these factors exist, the amendment shall not be considered by the Commission unless a new public hearing is scheduled with a view toward allowing full public participation and attendance at the

hearing on the amendment as required by Section 30712. The port governing body shall waive the 90-day time period of Public Resources Code Section 30714 in writing or on the record to permit adequate time for Commission consideration of the amendment and public comments on the amendment. If the executive director finds the amendment is not material or has been the subject of adequate public comment at the public hearing, the Commission, unless it disagrees with the findings of the executive director, shall consider and take action on the amendment rather than the master plan as initially submitted.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30716, Public Resources Code.

HISTORY

1. Amendment filed 3-12-82; effective thirtieth day thereafter (Register 82, No. 11).
2. Amendment filed 6-16-82; effective thirtieth day thereafter (Register 82, No. 25).

§ 13635. Effect of Rejection.

If the commission rejects the submitted master plan in whole or in part, it shall make findings on all portions of the plan deemed insufficient. Those portions that are rejected shall not be resubmitted to the commission pursuant to Public Resources Code, Section 30714 for 90 days following such rejection unless the executive director finds that there is a substantial change in the portion of the master plan that was rejected.

§ 13636. Amendments to Master Plan After Certification.

An amendment to the port master plan by the governing body of the port shall not become effective until the commission has certified it in the manner provided in Public Resources Code, Section 30714 for certification of master plans, or after the 10 working day following the date that the executive director has certified such amendment as being minor in nature as provided in Section 13637 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30716, Public Resources Code.

HISTORY

1. Amendment filed 3-12-82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13637. Minor Amendments.

(a) The governing body of a port may request the executive director of the commission to designate an amendment to the port master plan as being minor in nature pursuant to Public Resources Code, Section 30716(b). Any such amendment shall be submitted to the executive director and shall be accompanied by the same information supporting such amendment as would be required for any other amendment. Notice of such amendment shall be given to all persons who the executive director has reason to know may be interested. No sooner than 15 working days from the date that such notice was transmitted, the executive director shall make a determination as to whether to designate such amendment as minor in nature. Any such determination shall be in writing with findings supporting the determination and the conformance of the amendment with the provisions of this division. The determination shall be transmitted to those receiving notice. No amendment shall be designated minor in nature if it involves significant filling, dredging or diking or a type of use not specifically provided for in the certified master plan or if in the opinion of the executive director the proposed amendment would not be consistent with the provisions of this division, would materially alter any significant condition or situation that formed a basis for certification of the port master plan, would result in any substantial adverse environmental effect, or would have a reasonable risk of producing such a result. An amendment designated as being minor in nature shall not become effective for 10 working days following the designation by the executive director.

(b) Any determination pursuant to subsection (a) shall be reported to the commission at its next regularly scheduled meeting by the executive director.

Article 5. Notification and Appeals After Certification

§ 13640. Notification of Appealable Developments After Certification of Master Plan.

After certification of a port master plan, the governing body of the port shall notify the Commission on a form approved by the executive director of the Commission of any appealable development proposed within its jurisdiction during the planning and design phase of the development or as soon as the governing body becomes aware of such proposed development, if the governing body of the port is not involved in the planning or design of such development. Such notice shall include a description of the purpose and design of the development to the extent that is known, and the estimated time when the development will be acted upon by the port governing body.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30715, Public Resources Code.

HISTORY

1. Amendment filed 3-12-82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13641. Appeals After Certification of Master Plan.

(a) Upon approval of any appealable development by the port governing body, the port governing body shall notify the Commission, and other interested persons, organizations and governmental agencies of the approval, on a form made available by the executive director of the Commission. Such notification shall include a description of the proposed development, its location, and shall indicate how it is consistent with the certified port master plan and the California Coastal Act of 1976.

(b) The approval of any appealable development by the governing body of the port shall become effective after the 10th working day following receipt of notice by the Commission unless an appeal is filed with the Commission within that time. Any permit issued for an appealable development shall contain a written statement to this effect.

(c) Appeals shall be filed and processed by the Commission in the same manner as appeals from local government actions as set forth in Chapter 7 of the California Coastal Act and Chapter 5 of these regulations. The filing of an appeal shall suspend the effectiveness of the port governing body's approval until the commission takes final action on the appeal. No appealable development shall be commenced until final approval by the commission becomes effective.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30715, Public Resources Code.

HISTORY

1. Amendment of subsection (c) filed 6-16-82; effective thirtieth day thereafter (Register 82, No. 25).

Article 6. Environmental Impact Review—Port Master Plans and Development Undertaken in Port Areas

§ 13645. Review and Comments on Environmental Documents.

(a) The port governing body shall submit any initial studies, draft Environmental Impact Report, draft Negative Declaration, or draft Environmental Impact Statement concerning the port master plan or, after certification of the port master plan, concerning any development which may be appealed to the Commission pursuant to Public Resources Code Section 30715, to the executive director of the Commission as soon as practicable after such are prepared. For purposes of this subchapter the proposed port master plan and appropriate environmental documents may be submitted as a single combined document, when such document meets the substantive and procedural requirements of both the California Environmental Quality Act and the California Coastal Act of 1976.

(b) The executive director shall:

(1) Review any Initial Environmental Study sent to him or her for consultation purposes, determine what comments should be made on behalf of the commission, and forward such comments to the port governing body; and

(2) Review any draft environmental documents, received either through the State Clearinghouse review process or through other review procedures, determine what comments should be made on behalf of the commission, and forward such comments to the port governing body and the State Clearinghouse.

(c) The commission, in its discretion, may hold a public hearing on any environmental document submitted and direct the staff to make whatever comments, or to obtain whatever additional information, the commission deems appropriate.

§ 13646. Submission of Final Environmental Impact Reports or Negative Declaration.

(a) After the port governing body has certified a Final Environmental Impact Report, Environmental Impact Statement, or Negative Declaration, it shall submit such to the commission together with the adopted port master plan. For purposes of this section and to avoid unnecessary duplication, the Environmental Impact Report and Port Master Plan may be submitted as a single document, when such single document meets the substantive and procedural requirements of both the California Environmental Quality Act and the California Coastal Act of 1976.

(b) In the case of an appealable development, the port governing body shall submit the certified Final Environmental Impact Report, Environmental Impact Statement, or Negative Declaration with the notice required by Section 13641.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30715, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13647. Notification of Non–Appealable Developments After Certification.

For developments approved by the commission in a certified master plan, but not appealable, the port governing body shall forward any draft environmental impact report(s) and negative declaration(s) prepared pursuant to the California Environmental Quality Act of 1970 or any draft environmental impact statement(s) prepared pursuant to the National Environmental Policy Act of 1969 to the commission in a timely manner to ensure sufficient time for the commission to comment on such developments prior to approval by the port governing body.

§ 13648. Effects of Comments.

Comments on environmental documents submitted by the commission or the executive director are intended to aid the port governing body in preparing adequate environmental documents. They do not indicate what action the commission may take with regard to certification of the port master plan or appealable development when submitted to the commission for review, nor do they preclude the commission from requiring additional environmental information in the course of any review process or from taking any action with respect to any development authorized by the California Coastal Act of 1976.

Chapter 9. Sewage Treatment Works

Subchapter 1. Review of Sewage Treatment Works for Which Request for State and/or Federal Funding Has Been Made to the State Water Resources Control Board

Article 1. Scope

§ 13650. Scope.

The provisions of this article are adopted pursuant to the requirements and under the authority of Public Resources Code, Section 30338. The provisions of this Article apply only to permit applications for sewage treatment works for which request for state and/or federal funding has been made to the State Water Resources Control Board.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. New Chapter 9 (Sections 13750–13757) filed 7–22–77 as an emergency; effective upon filing (Register 77, No. 30).
2. Repealer of Chapter 9 (Sections 13750–13757) by operation of Section 11422.1, Government Code (Register 78, No. 24).
3. New Chapter 9 (Sections 13650–13658) filed 6–14–78 as an emergency; effective upon filing (Register 78, No. 24).
4. Certificate of Compliance filed 8–10–78 (Register 78, No. 32).
5. Amendment of note filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13651. Staff Involvement.

Staff of the Commission shall, to the extent staff resources are available, participate in any pre–project meeting or draft facilities plan meeting conducted in conjunction with a project requesting funding.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 2. Completeness of Application

§ 13652. Completeness of Application.

A permit application for such sewage treatment works shall be deemed to be complete only when the application is accompanied by a final Facilities Plan as defined by regulations of the State Water Resources Control Board, including a final Environmental Assessment, final Environmental Impact Report, or adopted Negative Declaration, as appropriate. For purposes of this section, the Facilities Plan shall not be deemed to be final unless the staff of the State Water Resources Control Board advises the Commission in writing that the documents are in final form and unless the final Facilities Plan includes sufficient information to allow an assessment of the financial impact of the funding of such treatment works on all properties in the affected service district(s) located within the coastal zone. Any addendum to or material modification of the final Facilities Plan shall extend the Commission review period an additional thirty (30) days.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Article 3. Filing, Hearings, and Appeals

§ 13653. Filing and Hearing Procedures.

The procedures governing the filing and public hearing procedures shall be the same as those set forth in Sections 13053.5–13096 except as specifically modified in this Article.

§ 13654. Filing of Preliminary Application; Waiver of Preliminary Approval Requirements.

A preliminary application for such sewage treatment works will be accepted for filing without meeting the preliminary approval requirements of Section 13052 if the following conditions are met:

(1) the application is accompanied by a draft Facilities Plan, including a draft Environmental Assessment, draft Environmental Impact Report, or proposed Negative Declaration;

(2) the applicant agrees to notify the Commission in writing of any proposed adoption of a Negative Declaration for such sewage treatment works at least thirty (30) days prior to adoption of such Negative Declaration;

(3) the applicant agrees to waive any otherwise applicable deadline for the public hearing and vote on the application until sixty (60) days after the filing of a complete application pursuant to Section 13652.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13655. Initial Public Hearing.

Within 49 days of the filing of the preliminary application submitted pursuant to Section 13654, the Commission shall hold a public hearing on the preliminary application. The Commission shall not close the hearing but shall keep the hearing open until the vote pursuant to Section 13657.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13656. Comments on Draft Environmental Impact Report.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13657. Commission Vote on the Permit Application.

Within sixty (60) days of the filing a complete application pursuant to Section 13652, the Commission shall conclude the public hearing on the application and shall vote in the same manner set forth in Section 13073–13096.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Amendment filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

§ 13658. Appeal to the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30338, Public Resources Code.

HISTORY

1. Repealer filed 3–12–82; effective thirtieth day thereafter (Register 82, No. 11).

Chapter 10. Federal Consistency

Subchapter 1. Commission Procedures for Consistency Certifications for Outer Continental Shelf (OCS) Exploration, Development or Production Plans for OCS Related Federal Permits

§ 13660. Definitions.

(a) The term "applicant" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional or local government, or any entity of such Federal, State, regional or local government, who submits to the Area Supervisor (or other designee of the Secretary of Interior) after August 31, 1978, an OCS plan.

(b) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, as Amended, (43 U.S.C. #S 1331 et. seq.), and the regulations under that Act, which describes in detail activities requiring a Federal license or permit.

(c) The term "Area Supervisor" means the Pacific Area Oil and Gas Supervisor, Minerals Management Service formerly the United States Geological Survey, Department of the Interior.

(d) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

(e) The term "Executive Director" means the Executive Director of the California Coastal Commission.

(f) The term "California Coastal Management Program" (CCMP) means the program approved by the Department of Commerce pursuant to the Coastal Zone Management Act (16 USC Section 1451 et seq.).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC Section 1456(c); and 15 CFR Part 930 et. seq. as adopted June 25, 1979, 44 FR 37143.

HISTORY

1. New Chapter 10 (Subchapter 1, Sections 13660–13660.11) filed 11–28–78 as an emergency; effective upon filing (Register 78, No. 48).
2. Certificate of Compliance filed 3–28–79 as to emergency filing of 11–28–79 (Register 79, No. 13).
3. Amendment filed 3–28–79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
4. Amendment filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.1. Preliminary Consultation.

(a) As soon as possible, but at least 10 days prior to submission to the Area Supervisor of any plan for the exploration of areas leased under the Outer Continental Shelf Lands Act (43 USC 1331 et seq.), and at least 30 days prior to submission of plans for the development or production of areas leased under that Act, any applicant wishing to undertake such activities in areas adjacent to California waters shall consult with the Executive Director at the state office concerning all the activities required to be described in detail in the OCS plan affecting the land or water uses in the coastal zone.

This shall include, at minimum, activities requiring the following federal approvals:

MMS—Department of the Interior

Approval of offshore drilling operations

Approval of design plans for the installation of platforms

Approval of gathering and flow lines

The following OCS related Federal license or permit activities are encouraged to be included, if they will be required in connection with the OCS activity.

Department of Defense—U. S. Army Corps of Engineers

Permits and licenses required under Sections 9 and 10 of the Rivers Harbors Act of 1899

Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972

Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments

Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f))

Department of Interior—Bureau of Land Management—MSS

Permits and licenses required for drilling and mining on public lands (BLM)

Permits for pipeline rights-of-way on the Outer Continental Shelf

Permits and licenses for rights-of-way on public lands

Environmental Protection Agency

Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments

Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality

Department of Transportation—U.S. Coast Guard

Permits for construction of bridges under 33 USC 401, 491–507 and 525–534

Permits for deepwater ports under the Deepwater Port Act (P.L.93-627)

Federal Energy Regulatory Commission

Certifications required for interstate gas pipelines

Permits or licenses for construction and operation of facilities needed to import, export or transship natural gas or electrical energy

Any other OCS related Federal license or permit activities which are not listed above are also encouraged to be included, if they will be required in connection with the OCS activity.

(b) The Executive Director shall provide the applicant with a copy of the California Coastal Zone Management Plan ("CCMP") upon request.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC Section 1456(c); and 15 CFR 930.64, 930.75, 930.77 and 930.82.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.2. Review of Environmental Report for Sufficiency of Information.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008(c), Public Resources Code.

HISTORY

1. Repealer filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included. For former history, see Register 78, No. 48.

§ 13660.3. Submission of Consistency Certification.

(a) The applicant shall submit to the Area Supervisor who in turn shall submit to the Executive Director: the OCS plan, with accompanying consistency certification and supporting information for all activities required to be described in detail in the plan and identified in Section 13360.1(a) of these regulations, and the environmental report as soon as it is deemed submitted to the Area Supervisor pursuant to 30 CFR 250.34-1(b)(1) for exploration plans or 30 CFR 250.34-2(b)(1) for development and production plans.

(b) The consistency certification shall be in the following form:

The proposed activities described in detail in this plan comply with California's approved coastal management program and will be conducted in a manner consistent with such program.

(c) The applicant shall also include the following supporting information:

(1) a brief assessment relating the probable coastal zone effects of each of the enumerated activities and their associated facilities to the relevant elements of the program policies of the CCMP; and

(2) a brief set of findings derived from the assessment indicating that each of the enumerated activities (e.g. drilling, platform placement) and its associated facilities (e.g. onshore support structures, offshore pipelines), and its primary effects (e.g. air, water, waste discharges, erosion, wetlands, beach access impacts) are consistent with the mandatory provisions of the CCMP.

(d) Upon request of the applicant, the California Coastal Commission staff will provide assistance in preparing the assessment and findings required in Section 13660.3(c)(1) and (2) of these regulations.

(e) The Executive Director may request in writing additional data and information from the applicant if he deems it necessary for a complete and proper review. Such a request shall not extend the date for commencement of Coastal Commission review; however, failure to submit the requested information could result in an objection to the applicant's consistency certification [See Section 13660.8(b)(4)]. The applicant shall comply with such request within 10 days of its receipt or shall indicate within 10 days reasons why the request cannot be complied with.

(f) When the OCS Plan submitted to the Executive Director by the Area Supervisor has deleted confidential and proprietary information, the places where such information has been deleted and the general subject matter of the information shall be identified. Where the Executive Director determines that such confidential and proprietary information is necessary to adequately assess the coastal zone effects of the activities described in the OCS plan and therefore to make a reasoned decision on the consistency of such activities, such information shall be provided after the Executive Director has provided adequate assurance of confidentiality in accordance with the applicable implementing federal regulations (15 CFR Section 930.77 and 30 CFR Part 252). The procedures specified in Section 13660.3(e) apply to the Executive Director's request for confidential and proprietary information.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR Sections 930.58 and 930.77; and 30 CFR Part 252.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.4. Staff Summary, Recommendation, and Hearing Notice.

After receipt of the OCS plan, environmental report, consistency certification and the accompanying findings and assessments and any other information which the Executive Director deems necessary, the Executive Director shall:

(a) Prepare a staff summary and recommendation of the applicants' findings and assessments and send it to the applicant, the Assistant Administrator, the Area Supervisor, and other relevant Federal agencies, local governments, state agencies, and other interested parties. If the vote on the certification is scheduled for a later meeting than the oral hearing, the Executive Director shall prepare a separate staff recommendation according to the requirements of Chapter 5, Article 12 (T. 14 Cal. Adm. Code).

(b) Schedule a Commission public hearing on the applicant's consistency certification, findings and assessments and the staff summary, and recommendation, giving appropriate notice to all interested parties, (as listed in Section 13660.4(a) above), with particular emphasis on informing citizens of the coastal area which will be affected pursuant to the permit regulations in Chapter 5 (T. 14 Cal. Adm. Code) unless specifically changed herein. The Director shall endeavor, where possible, to schedule the public hearing in the affected region. The notice shall announce the availability for inspection of the applicant's consistency certificate and findings. The state and regional agencies responsible for air and water quality compliance shall be notified and provided the opportunity to pres-

ent their agencies' positions before the Commission hearing. Such hearing shall be set for a regular Coastal Commission meeting not later than the 49th day after receipt of the documents required by Section 13660.3. The Executive Director may, at his discretion, extend for an additional 30 days the 49-day time period for a hearing. All public hearings shall be scheduled with a view toward allowing widespread public distribution of the information contained in the staff's summary and recommendation and toward allowing maximum public participation and attendance at the hearing particularly for the citizens of the affected area, while affording the applicant expeditious consideration of consistency certifications.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30008 and 30621, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.61(a), 930.63, 930.79 and 930.84(a).

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.5. Contents of Summary and Recommendation.

The summary shall: (1) list the major activities listed in the OCS plan, for which a consistency certification has been required, (2) discuss the effect of these activities and their associated facilities, on land or water uses in the coastal zone, (3) discuss the consistency of such activities and related effects with the mandatory provisions of the CCMP.

The summary shall also specifically list all other Federal permits for which consistency findings have not been enclosed and for which future consistency certification will be required under Section 13660.11 of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Sections 30008 and 30621, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.61(a), 930.63, 930.79 and 930.84(a).

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.6. Conduct of Hearings on Staff Recommendations on a Consistency Certification.

The Commission shall conduct de novo hearings on consistency certifications substantially in accordance with the applicable procedures for permit hearings set forth in Chapter 5 (T. 14 Cal. Adm. Code) of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.79.

HISTORY

1. Amendment of Section title filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.7. Consent Calendar Procedures.

Consistency certifications at the discretion of the Executive Director may be included as a consent calendar item pursuant to Chapter 5, Article 15 (T. 1 Cal. Adm. Code) of these regulations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Repealer and new section filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.8. Final Commission Decision.

(a) The Commission shall issue a decision on whether the applicant's consistency certification complies with the CCMP; i.e., whether it "concurs" or "objects" to the applicant's consistency certification, at the earliest practicable time and in no event more than 6 months from the date of receipt of such consistency certification and required information from the USGS Area Supervisor (see Section 13660.3 of these regulations). If a Commission decision has not been reached within 3 months of such receipt, the Executive Director shall notify in writing the Assistant Administrator, the applicant, the USGS Area Supervisor, and the relevant Federal agencies of the status of review and the basis for further delay.

(b) A Commission decision which objects to an applicant's consistency certification for one or more of the activities described in detail in the OCS plan shall be accompanied by a statement indicating:

(1) the effect which the activity will have on coastal land or water uses in the coastal zone,

(2) how the activity is inconsistent with a mandatory provision of the CCMP,

(3) alternative measures or conditions (if they exist) which would make their proposed activity consistent with CCMP policies,

(4) if a decision to object is based upon grounds that the applicant has failed to provide information requested by the Executive Director, the type of information requested and the necessity of that information for a consistency certification must be described, and

(5) the applicant's right of appeal to the Secretary of Commerce on the grounds that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

(c) The Commission shall notify the applicant, the Area Supervisor, the Assistant Administrator, and the relevant Federal agencies of its decision by sending a copy of its Final Decision to them.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.63, 930.64 and 930.79.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.9. Appeals Procedure.

Any applicant may file a notice of appeal of a Commission objection to a consistency certification within 30 days of receipt to the Secretary of Commerce according to the provisions of the Coastal Zone Management Act (16 USC Sec. 1451 et seq.) and the regulations contained in 15 CFR Par 930.120 et seq. The applicant shall send a copy of the notice of appeal and accompanying documents to the Executive Director. The Executive Director shall submit detailed comments to the Secretary of Commerce within 30 days of receipt of the appeal and transmit copies to the applicant, the Area Supervisor, and the relevant Federal agencies. Where the commission meeting schedule allows sufficient time for discussion prior to the 30 day period, these comments shall be the subject of Commission discussion with opportunity for public comment. This procedure shall also be followed if the Secretary of Commerce pursues an independent review of the consistency of an OCS activity.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.120-134.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.10. Required Amendments.

Any amendment to an OCS plan which must be submitted as a result of Commission objection to consistency of an OCS activity shall be processed as if such amendment were a new plan; i.e. Sections 13660.1-.13 of these regulations apply, except that the Commission must make its decision within 3 months of receipt.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.83, 930.84, 930.85 and 930.86.

HISTORY

1. Amendment filed 3-28-79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment of NOTE filed 12-7-82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.11. Multiple Permit Review.

(a) Applicants are strongly encouraged to include with OCS plans detailed descriptions, consistency certifications, findings and assessments and other supporting data for other OCS–related activities, which require a federal license or permit but are not required to be described in detail in OCS plans by the Secretary of the Interior (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, or the other permits listed in Section 13660.1 of these regulations). Where consistency certifications and related findings and assessments are made for all required Federal permits connected with an OCS plan, the applicant shall so state and consolidated consistency review for these activities will take place at the same time and under the same procedures as review of activities required to be described in detail in OCS plans (Sections 13660.1–.13 of these regulations).

(b) If consistency certifications and related assessments and findings for all OCS related Federal permits are not included with an OCS plan and consistency certification, the applicant shall state which Federal permit activities have not been included. The final decision of the Commission shall state which Federal permit activities have not been included and therefore must be reviewed separately.

(c) The applicant and the Coastal Commission shall comply with Sections 13660–13660.13 of these regulations in processing consistency certifications which have not been included with OCS plans, except that:

(1) As soon as possible, but at least 10 days prior to submission of an application for a Federal permit, the applicant shall consult with the Executive Director concerning OCS–related Federal license or permit activities.

(2) An environmental report as described by 30 CFR 250.34–3(a) and 3(b) need not be submitted, if one which covered the subject permit activity was previously submitted under Section 13660.3 of these regulations, or if the Executive Director is satisfied that the applicant has provided sufficient information concerning the environmental effects of the permit activity to adequately review the project as if it were a coastal permit under the CCMP.

(3) Wherever there is a requirement to notify the Area Supervisor, notification shall also be sent to the appropriate Federal permitting agency.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.82.

HISTORY

1. Amendment filed 3–28–79 as an emergency; effective upon filing (Register 79, No. 13). Certificate of Compliance included.
2. Amendment filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.12. Associated Coastal Development Permits.

Where a facility associated with an OCS plan requires a coastal development permit application under the California Coastal Act (e.g. pipeline, marine terminal, onshore support and processing facilities, etc.), the applicant shall notify the Executive Director of the facility's relationship to the OCS plan at the time of submittal of the plan. Where a coastal permit application for such a facility precedes submittal of the OCS plan to the Commission, the applicant shall notify the Executive Director that the facility is associated with a forthcoming OCS plan. If the Executive Director determines that a consolidated review of the applicant's consistency certification and application for a coastal development permit is necessary for complete and proper consideration of the matter, he shall recommend such consideration in whatever manner necessary to comply with applicable time limitations.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.82.

HISTORY

1. New section filed 3–28–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 13).
2. Amendment filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13660.13. Monitoring of Federal Permits.

Copies of Federal license and permit applications for activities described in detail in an OCS plan, as well as for OCS–related activities, which have received Commission concurrence and which have been requested in the final Commission decision, shall be sent by the applicant to the Executive Director to allow the Commission to monitor the activities.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30008, Public Resources Code; 16 USC 1456(c); and 15 CFR 930.86.

HISTORY

1. New section filed 3–28–79 as an emergency; effective thirtieth day thereafter. Certificate of Compliance included (Register 79, No. 13).
2. Amendment filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).

Chapter 11. Energy Facilities and LCP "Override" Procedures

Subchapter 2. Certified Local Coastal Program (LCP) Amendment "Override" Procedures

§ 13666. Applicability.

These procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:

(1) unanticipated by the person proposing the development at the time the LCP was before the Commission for certification.

(2) meets the public needs of an area greater than that included in the certified LCP.

All other developments requiring an amendment to the certified LCP shall follow the LCP amendment procedures of the affected local government and the Commission.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30515, Public Resources Code.

HISTORY

1. New Chapter 11 (Subchapter 2, Sections 13666–13666.4) filed 12–7–82; effective thirtieth day thereafter (Register 82, No. 50).

§ 13666.1. Information Requirements for Preliminary Determination of Applicability.

A person desiring review according to this subchapter may first submit an LCP amendment application (following the requirements of the affected local government) to the Executive Director with sufficient information setting forth the reasons for the amendment with particular emphasis on the applicability requirements as specified in Section 13666, and how it conforms with the policies of Public Resources Code Section 30200 et seq. The Executive Director shall, within 30 days, review the Local Coastal Program file and the projected scope of this subchapter. A determination of the Executive Director is final and shall be forwarded to the affected local government and the person desiring review.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30515, Public Resources Code.

§ 13666.2. Submittal to Local Government.

(a) If the Executive Director has preliminarily determined that the development is subject to this subchapter, the application shall first be submitted to the affected local government for an LCP amendment according to applicable requirements. The local government shall make its determination based on factual findings and reasoning supporting the conclusions of law set forth in this subchapter. If the local government fails to amend the LCP within 90 days of submittal, the person submitting such an amendment may file a request for an amendment with the Commission.

(b) If the applicant has not requested a preliminary determination, or if the Executive Director has determined that the override provisions do

not apply, the applicant may nevertheless request the Commission to consider the application through an appeal from a final local government decision. The appeal from the local government's decision shall follow local coastal program regulations and additionally include the information requirements of this subchapter in order to advise the Commission that in the applicant's opinion, the development is subject to Section 30515.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30515, Public Resources Code.

§ 13666.3. Commission Review.

Commission review shall be undertaken only after consultation with the affected local government and review shall be conducted according to the LCP regulations. A local government resolution is not required if the local government fails to act within 90 days as specified in 13666.2(a).

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30515, Public Resources Code.

§ 13666.4. Required Findings.

(a) If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic, and environmental effects, supports the following conclusions:

(1) development meets a public need of a geographic area greater than that included within the certified LCP.

(2) development conforms with and is adequate to carry out the policies of Public Resources Code Section 30200 et seq.

(3) if significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.

(4) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public Resources Code Section 30000 et seq.) and the California Coastal Management Program, if applicable.

(b) If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30515, Public Resources Code.

Barclays Official

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Title 14. Natural Resources

Division 5.6. State Coastal Conservancy

Vol. 19

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Division 5.6. State Coastal Conservancy

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Division 5.6. State Coastal Conservancy

Chapter 1. General Provisions

Article 1. Interpretation of Regulations

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Chapters 1, 2 and 3 of Division 21, Public Resources Code.

HISTORY

1. New Division 5.6 (Chapters 1–3, Sections 13701–13735, not consecutive) filed 9–29–77 as an emergency; effective upon filing (Register 77, No. 40).
2. New Division 5.6 (Chapters 1–3, Sections 13701–13735, not consecutive) refiled 2–27–78 as an emergency; effective upon filing (Register 78, No. 9).
3. Certificate of Compliance as to filing of 2–27–78 filed 4–17–78 (Register 78, No. 16).
4. Repealer of Article 1 (Sections 13701–13704) filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

§ 13705. Inspection of Public Records.

HISTORY

1. Repealer of Article 2 and Section 13705 filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

§ 13706. Copies and Certification of Public Records.

Copies of public records may be made and certified by the Conservancy, the expense thereof to be borne by the person or party requesting the same, unless copies for public distribution are already on file.

All requests for copies of Conservancy records shall be made in writing. Such requested shall describe the records with sufficient specificity that the Conservancy may identify and locate the records. Such requests shall also be accompanied by proper payment when required under this section, except where advance payment has been waived by the Executive Officer for good cause. Copies of public records requested in accordance with the above requirements shall be sent to the requesting party within seven working days of the request. If a request, or portion of a request, cannot be satisfied within seven working days, notice to that effect shall be sent to the requesting party within that time.

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Sections 6253, 6256 and 6257, Government Code.

HISTORY

1. Amendment filed 2–10–82; effective thirtieth day thereafter (Register 82, No. 7).
2. Editorial correction of section heading (Register 82, No. 45).

Chapter 2. Meetings

Article 1. Notice

§ 13712. Method of Notification.

Notice of regular meeting of the Conservancy shall be by first class mail or other reasonable means, dispatched not later than 10 days preceding the meeting and containing an agenda listing each item to be considered.

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Section 11125, Government Code.

HISTORY

1. Repealer of Chapter 2 (Article 1, Sections 13710 and 13711), Article 2 (Sections 13713 and 13714), Article 3 (Sections 13715 and 13715.5), Article 4 (Sections 13716 and 13717), Article 5 (Sections 13720, 13722–13724); renumbering of Article 2 (Section 13712) to Article 1 and amendment of new Article 1 heading; and renumbering of Article 5 (Sections 13718, 13719 and 13721) to Article 2 and amendment of new Article 2 heading filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45). For prior history, see Register 82, No. 7.
2. Amendment filed 12–26–84; effective thirtieth day thereafter (Register 84, No. 52).

Article 2. Quorum and Procedures

§ 13718. Quorum.

For all meetings of the Conservancy, a quorum shall be a majority of the total authorized membership of the Conservancy. No action shall be taken in the absence of a quorum, except that a lesser number of members may continue a meeting or a hearing from time to time until a quorum is present; provided, however, that such a continued meeting or hearing shall not substitute for the requirements of Public Resources Code, Section 31102.

NOTE: Authority and reference cited: Section 31102, Public Resources Code.

HISTORY

1. Editorial correction adding NOTE filed 11–3–82 (Register 82, No. 45).

§ 13719. Voting—Number Required to Authorize Action.

Except as otherwise required by Division 21 of the Public Resources Code or in these regulations, actions by the Conservancy shall be by affirmative vote of a majority of those members present and constituting a quorum.

NOTE: Authority and reference cited: Section 31102, Public Resources Code.

§ 13721. Agenda.

(a) The agenda for regular meetings of the Conservancy shall be set by the executive officer at least 10 days prior to the meeting.

(b) The chairperson may direct that the order of the agenda be altered for any particular meeting, or that any particular item on the agenda be taken out of order when, in the chairperson's opinion, such change is desirable. Any such action may be rejected or modified by a vote of a majority of members present.

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Section 11125, Government Code.

HISTORY

1. Amendment of subsection (a) filed 12–26–84; effective thirtieth day thereafter (Register 84, No. 52).

Chapter 3. Officers and Staff

Article 1. Officers

HISTORY

1. Repealer of Article 1 (Section 13730–13732) filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

§ 13733. Executive Officer—Appointment and Term.

HISTORY

1. Repealer of Article 2 heading and Section 13733 filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

§ 13734. Duties and Delegation of Staff.

(a) In accordance with the direction and policies of the Conservancy and pursuant to Public Resources Code Section 31103, the executive officer shall administer the affairs of the Conservancy and, subject to approval by the Conservancy, the executive officer shall, on behalf of the Conservancy and in accordance with applicable state and civil service procedures, appoint such other employees as may be necessary to carry out the functions of the Conservancy.

(b) Except as specially provided by resolution, the executive officer may delegate the performance of any of his or her functions but such delegation(s) shall not affect his or her responsibility to see that the directions and policies of the Conservancy are carried out fully and faithfully.

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Section 31103, Public Resources Code.

HISTORY

1. Editorial correction of section heading (Register 82, No. 45).
2. Repealer of subsection (c) filed 12–26–84; effective thirtieth day thereafter (Register 84, No. 52).

§ 13735. Acting Executive Officer.

HISTORY

1. Repealer filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

Chapter 4. Procurement of Private Architectural or Engineering Services

NOTE: Authority cited: Section 31102, Public Resources Code. Reference: Chapters 1, 2 and 3 of Division 21, Public Resources Code.

HISTORY

1. New Chapter 4 (Section 13740) filed 4–17–78 as an emergency; effective upon filing (Register 78, No. 16).
2. Certificate of Compliance filed 7–7–78 (Register 78, No. 27).
3. Repealer of Chapter 4 (Section 13740) filed 11–3–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 45).

Chapter 5. Procedures for Acquisition of Interests in Real Property

NOTE: Authority cited for Chapter 5 (Sections 13750–13751): Section 31102, Public Resources Code. Reference: Chapters 3, 4, 5, 6, and 8 of Division 21, Public Resources Code.

HISTORY

1. New Chapter 5 (Sections 13750 and 13751) filed 9–28–78; effective thirtieth day thereafter (Register 78, No. 39).
2. Repealer of Chapter 5 (Sections 13750 and 13751) filed 2–10–82; effective thirtieth day thereafter (Register 82, No. 7).

Chapter 6. State Coastal Conservancy—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE COASTAL CONSERVANCY
1212 BROADWAY, ROOM 514
OAKLAND, CALIFORNIA 94612

FAIR POLITICAL PRACTICES COMMISSION
1100 K STREET
SACRAMENTO, CALIFORNIA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 6, Division 5.6 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 6. State Coastal Conservancy—Conflict of Interest Code

Section
13800. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300 et seq., Government Code.

HISTORY

1. New Chapter 6 (Sections 13800–13809) filed 11–6–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 8–8–79 (Register 79, No. 45).
2. Repealer of Chapter 6 (Sections 13800–13809) and new Chapter 6 (Section 13800 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment of Appendix filed 12–3–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 8–31–81 (Register 81, No. 49).
4. Amendment of section and Appendix filed 9–26–95; operative 10–26–95. Approved by Fair Political Practices Commission 8–18–95 (Register 95, No. 39).
5. Amendment of general provisions and appendix filed 9–20–2005; operative 10–20–2005. Approved by Fair Political Practices Commission 7–23–2005 (Register 2005, No. 38).

Chapter 7. Experimental Fishing Gear Loan Program

Article 1. Authority and Purpose

§ 13850. Authority.

This chapter is adopted pursuant to Section 31125.6(c) of the Public Resources Code (enacted as Section 8 of the Nearshore Gill and Trammel Net Fishery Mitigation Act, Chapter 910, Statutes of 1986, hereinafter called the "Act") in order to develop and implement, interpret and make specific the provisions contained in Sections 3.5, 5 through 10, 13, and 14 of the Act, and Sections 7 through 10 of Chapter 1298 of the Statutes of 1987, amending the Act, regarding the establishment and operation of a low–interest loan program to finance the development and operation of alternative fishing gear for use in nearshore waters within the coastal zone north of Point Conception where restrictions on the use of gill and trammel nets exist pursuant to Section 4 of the Act, and Section 3 of Chapter 1298 of the Statutes of 1987.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c), 8615 and 8664.12(a) and (b), Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13851. Purpose.

Through the Act, and further through Section 3 of Chapter 1298 of the Statutes of 1987, the Legislature placed severe restrictions on the use of gill and trammel nets in nearshore waters of the Coastal Zone north of Point Conception in order to provide protections for marine bird and mammal populations. These restrictions will have an adverse economic impact on commercial fishing operators which previously utilized gill and trammel nets in the affected areas. In order to provide for commercial fishing in the restricted areas, the Act establishes a program for the development of alternative fishing gear, including an experimental gear permitting program and a monitoring and study program to be carried out by the California Department of Fish and Game. Additionally, the Act directs the State Coastal Conservancy to develop and implement a low–interest loan program to enable commercial fishing operators to acquire experimental equipment which will reduce impacts on non–target species when used in the restricted areas.

The restrictions on the use of gill and trammel nets became effective immediately under the Act. The additional restrictions of Section 3 of Chapter 1298, Statutes of 1987 also became effective immediately. In order to reduce the adverse economic impacts to commercial fishing operators financing the acquisition of alternative fishing gear before the 1988 fishing season, it is necessary that this chapter, as amended, take effect immediately. Section 8 of the Act (Public Resources Code Section 31125.6(c)) directs the Conservancy to adopt emergency regulations for the loan program and provides that the regulations become effective upon adoption.

The purpose of this chapter is to ensure the consistent and fair processing and approvals of loans made by the Conservancy, with appropriate input from other state agencies, affected parties and interested members of the public. These regulations delegate to the Executive Officer approval of loans, and specify parameters, criteria and procedures to be followed

by the Conservancy in evaluating, approving, rejecting, and terminating loans. The Conservancy will be assisted in establishing and operating the loan program by the Department of Fish and Game, the Department of Commerce, active commercial fishing operators and representatives of the commercial fishing industry.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c), 8615 and 8664.12(a) and (b), Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code; Ch. 910, Stats. 1986, Section 2; and Ch. 1298, Stats. of 1987, Section 11.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13852. Emergency; Effective Date.

This chapter is being adopted and amended as an emergency regulation in accordance with the mandate of Section 8 of the Act (Public Resources Code Section 31125.6(c)) and pursuant to findings made by the Conservancy on May 22, 1987, and March 18, 1988.

Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c), 8615 and 8664.12 (a) and (b), Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code; and Ch. 1298, Stats. of 1987, Section 15.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

Article 2. Loan Program Establishment and Operation

§ 13860. Definitions.

The following definitions apply to the terms used in this Chapter:

Act— means the Nearshore Gill and Trammel Net Fishery Mitigation Act (Chapter 910, Statutes of 1986) as amended by Sections 8 through 10 of Chapter 1298 of the Statutes of 1987;

Department— means the California Department of Fish and Game (CDFG);

Director— means the Director, California Department of Fish and Game;

Conservancy— means the State Coastal Conservancy;

Executive Officer— means the Executive Officer of the Conservancy;

Restrictions— means the restrictions placed on the use of gill and trammel nets in certain coastal waters of the State of California as set forth in Section 4 of the Act (Fish and Game Code Section 8664.5(a), (b) and (c)), and in Section 3 of Chapter 1298 of the Statutes of 1987 (Fish and Game Code Section 8664.8);

Restricted Areas— means subject to the Restrictions;

Loan Program— means the loan program described herein pursuant to Sections 3.5, 6 and 7 of the Act (Fish and Game Code Section 3613(d), 8614(b) and (c), 8615; Public Resources Code Sections 31125 and 31125.5) as amended by Section 7 of Chapter 1298 of the Statutes of 1987 (Fish and Game Code Section 8664.12);

Permittee— means a commercial fishing operator issued an experimental gear permit by the California Department of Fish and Game, pursuant to Sections 3 and 3.5 of the Act (Fish and Game Code Sections 8612, 8613 and 8614) or pursuant to Section 4 of Chapter 1298 of the Statutes of 1987 (Fish and Game Code Section 8664.9);

Permit— means an experimental gear permit issued by the California Department of Fish and Game pursuant to Sections 3 and 3.5 of the Act (Fish and Game Code Sections 8612, 8613 and 8614) or pursuant to Section 4 of Chapter 1298 of the Statutes of 1987 (Fish and Game Code Section 8664.9).

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c), 8615 and 8664.12 (a) and (b), Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 8, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13861. Coordination and Consultation.

The Conservancy, with the participation of representatives of the Department and the Department of Commerce, shall meet with representatives of commercial fishing organizations selected by the Director that have been affected by the restrictions to explain permit requirements, loan application procedures, employment training opportunities, and any other requirements and available funding sources that may be necessary to carry out the Loan Program.

If a Permittee seeks a loan, the Department shall forward the application to the Conservancy once the Permit is issued by the Department. The Conservancy shall review the application consistent with the eligibility criteria, loan limits, rates and terms, and procedures described in these regulations.

NOTE: Authority cited: Public Resources Code, Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13862. Eligibility Criteria.

(a) Loan applications submitted to the Conservancy shall be accompanied by either:

(1) Proof of a Permit approved by the Fish and Game Commission and issued to the loan applicant by CDFG pursuant to Sections 3 and 3.5 of the Act; or

(2) Proof of a Permit issued by CDFG with the advice of the Nearshore Research Advisory Committee pursuant to Section 4 of Chapter 1298 of the Statutes of 1987.

(b) Loan applications submitted to the Conservancy shall be accompanied by proof of fish landings of target species by the loan applicant from Restricted areas. Such proof shall be in the form of landing receipts issued to applicant under Section 8011 of the Fish and Game Code.

(c) For loan applications for funds allocated under Public Resources Code Section 31125(b)(2) for experimental gear used in portions of District 18 where restrictions on gill and trammel nets exist under Fish and Game Code Section 8664.5, such applications shall be accompanied by proof of issuance of a Permit for use within the area north of the line due west of Point Sal in Santa Barbara County and proof of landings of halibut taken in an area between a line due west of Point Sal in Santa Barbara County and a line due west of Point Sur in Monterey County between January 1, 1981 and June 1, 1986. Such proof shall be in the form of landing receipts issued to applicant under Section 8011 of the Fish and Game Code.

(d) All loan applications submitted with a permit issued pursuant to Section 4 of Chapter 1298 of the Statutes of 1987 must also be accompanied by the following:

(1) Proof that the Permittee possessed a special permit which was issued pursuant to Fish and Game Code Section 8610 as it read before the enactment of Chapter 1245 of the Statutes of 1986 on September 26, 1986; and

(2) Proof of either of the following:

(A) That prior to September 28, 1987 the Permittee filed an appeal of a denial of a special permit pursuant to former Section 8610 as it read prior to its repeal; or

(B) That the Permittee's special permit is impacted by the restrictions on fishing imposed by Section 3 of Chapter 1298 of the Statutes of 1987, which proof can be provided in either of the following two forms:

1. Landing receipts issued to the Permittee pursuant to Section 8011 of the Fish and Game Code which verify that the Permittee caught and landed at least 500 pounds of halibut, 1000 pounds of white croaker, 500 pounds of shark, 500 pounds of starry flounder or 2000 pounds of any combination of the above species in Districts 10 and 17 during the 1986–87 or 1987–88 permit year; or

2. Evidence that prior to September 28, 1987 the Permittee filed with the Fish and Game Commission an appeal of a denial of a special permit, pursuant to former Fish and Game Code Section 8610 as it read prior to its repeal, and that such appeal was upheld by the Commission.

(e) The credit worthiness of the applicant shall be considered in determining the eligibility of a loan applicant. The determination of credit worthiness shall be in the sole discretion of the Conservancy which shall utilize standard lending practices in investigating and in determining credit worthiness.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c), 8615 and 8664.9, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13863. Loan Limits, Rates and Terms.

(a) The total amount of funds which will be loaned under the Loan Program will not exceed $450,000.00.

(b) Out of that part of the $450,000 that remains unencumbered on April 1, 1988 no more than $100,000 in funds shall be allocated to the Loan Program.

(c) Until January 1, 1989, priority will be given to applicants with a Permit issued pursuant to Sections 3 and 3.5 of the Act. After January 1, 1989 no preference will be given to any applicant on the basis of Permits issued pursuant to Section 3 and 3.5 of the Act or Permits issued pursuant to Section 4 of Chapter 1298 of the Statutes of 1987.

(d) No new loans shall be executed under the Loan Program on or after January 1, 1990.

(e) Loan terms shall be established within the following parameters:

(1) The annual interest on the loan shall not exceed six (6) percent per annum, compounded annually.

(2) The term of the loan shall not exceed the useful life of the equipment to be purchased or used, but in no case shall the term exceed seven (7) years.

(3) No loan applicant shall receive a loan in excess of $50,000 without specific approval of the Board of the Conservancy.

(f) Subject to the parameters set forth in the immediately preceding subsection, the Conservancy shall determine the annual interest rate, loan term, period between payments, payment schedule, security and other loan terms for each loan. The criteria for determining loan terms shall be:

(1) The credit worthiness of the applicant;

(2) The public benefits to be gained from the implementation of an experimental fishing gear permit;

(3) The economic risks to the loan applicant; and

(4) The amount of new information the operation of the gear will provide to the management of the fishery and the protection of other marine resources.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code; and Ch. 1298, Stats. 1987, Section 13.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13864. Applications and Disbursements.

The Conservancy shall review the loan application and accompanying materials and notify the applicant that the Conservancy is reviewing the alternative fishing gear loan request. The notification shall include the terms of the proposed loan. The Conservancy shall negotiate the final terms and conditions of the loan with the applicant.

Upon approval of the loan by the Conservancy, and upon the submittal by the applicant of adequate documentation of equipment availability and cost, the Conservancy shall authorize the disbursement of loan proceeds to the applicant.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.

2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13865. Terminations and Buyback.

(a) Revocation of permits. If a Permit is revoked by the Department and the Permittee has an outstanding loan with the Conservancy, the unpaid balance of the loan shall be excused from the date of revocation if the Permittee returns the experimental fishing gear financed in whole or in part with the loan to the Department, in which case the Department shall take possession of the experimental fishing gear for the Conservancy.

Notwithstanding the above, if at the time of revocation the Legislature has approved the permanent use of the type of gear, the Permittee shall be responsible for any remaining balance on any outstanding loan with the Conservancy.

(b) Voluntary Termination Within Six Months. Pursuant to Section 3.5 of the Act (Fish and Game Code Section 8615(a)), within the first six months of operation pursuant to a Permit and after a reasonable and concerted effort to utilize a new type of commercial fishing gear, the Permittee may request that the Permit be terminated if it is economically infeasible to harvest the target species or if the experimental gear is impractical, inefficient, or ineffective within the fishery or regional area selected.

If the Department terminates the Permit and submits its findings to the Conservancy, the Conservancy may terminate the Permittee's loan. If the Department terminates the Permit under Fish and Game Code Section 8615(a)(2), and if the Permittee returns the experimental fishing gear financed in whole or in part with the loan to the Department, the Conservancy shall reimburse the Permittee from the loan fund for the principal amount of the loan payments made by the Permittee. If the Department terminates the Permit under Fish and Game Code Section 8615(a)(3), and if the Permittee returns the experimental fishing gear financed in whole or in part with the loan to the Department, Conservancy may reimburse the Permittee for any loan payments made.

(c) Voluntary Termination After Six Months. If the Department terminates the experimental gear permit after six (6) months or more of operation, the Conservancy may terminate the remaining balance on the loan if the Permittee returns the experimental fishing gear to the Department, but it shall not reimburse the Permittee for any loan payments made.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13866. Disposition of Funds.

Funds returned to the Conservancy under the Loan Program, whether from loan payments, proceeds of sale of experimental fishing gear or otherwise, shall be returned to the State Coastal Conservancy Fund for appropriation and expenditure for the purposes of Division 21 of the Public Resources Code.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31011, 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13867. Repeal of Regulations.

These regulations are automatically repealed as of January 1, 1990.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

§ 13868. Exercise of Authority.

Except as expressly set forth herein, all actions, approvals and authority by and of the Conservancy under these regulations shall be taken, given and exercised by the Executive Officer of the Conservancy pursuant to delegations of authority by the Board of the Conservancy on May 22, 1987 and March 18, 1988.

NOTE: Authority cited: Sections 31102 and 31125.6(c), Public Resources Code. Reference: Sections 8612(b), 8613(d), 8614(b) and (c) and 8615, Fish and Game Code; Section 15335.1(b), Government Code; and Sections 31125, 31125.5, 31125.6, 31126 and 31127, Public Resources Code.

HISTORY

1. New section filed 6–12–87 as an emergency; operative 6–12–87 (Register 87, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–9–87. Pursuant to Section 8 of the Act (Public Resources Code Section 31125.6(c)) and in accordance with Government Code Section 11346.2(a), these regulations shall be effective upon adoption by the Conservancy.
2. Certificate of Compliance filed 10–6–87 (Register 87, No. 42).
3. Amendment filed 4–4–88 as an emergency; operative 4–4–88 (Register 88, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–2–88.
4. Certificate of Compliance transmitted to OAL 7–11–88 and filed 7–25–88 (Register 88, No. 32).

Chapter 8. Contracting Process for Private Architectural, Engineering, Environmental, Land Surveying or Construction–Project Management Firms

Article 1. General Provisions

§ 13870. Definitions.

As used in these regulations:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, environmental services, land surveying, or construction–project management.

(b) "Executive Officer" means the Executive Officer of the California State Coastal Conservancy or his or her designee, as the person authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying and construction–project management services on behalf of the State Coastal Conservancy.

(c) "Architectural, landscape architectural, engineering, and land surveying services," "construction–project management" and "environmental services" have the respective meanings set forth in section 4525 of the Government Code.

(d) "Contractor" means a person, regardless of race, color, sex, ethnic origin or ancestry, or any firm, partnership, corporation, or combination thereof, whether or not a minority or women business enterprise, that of-

fers to perform or enters into a contract to provide architectural, landscape architectural, engineering, environmental, land surveying, or construction–project management services, on behalf of the State of California.

(e) The terms "disabled veteran" and "disabled veteran business enterprise (DVBE) shall have the respective meanings set forth in sections 999(f) and (g) of the Military and Veterans Code. The terms "minority," "minority business enterprise" (MBE), "woman business enterprise" (WBE), and goal" shall have the respective meanings set forth in section 10115.1 of the Public Contract Code.

(f) "M/WBE" means minority business enterprise and/or women business enterprise.

(g) "Small Business Firm" has the meaning set forth in section 14837(c) of the Government Code.

(h) "Good faith effort" means that a contractor has taken all of the steps listed below:

(1) Made contact with the Conservancy to identify D/VBEs.

(2) Made contact with other state and federal agencies, and with local D/VBE organizations to identify D/VBEs and M/WBEs.

(3) Advertised in trade papers and papers focusing on D/VBEs unless the Conservancy's time limits do not allow.

(4) Submitted to D/VBEs invitations to bid or other offers to contract.

(5) Considered available D/VBEs.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Section 10115.3(b), Public Contract Code. Reference: Sections 4525 and 14837(c), Government Code. Sections 10115, 10115.1 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order including amendment resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
3. Change without regulatory effect amending section filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).
4. Change without regulatory effect amending subsections (h)(1)–(5) filed 10–2–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 40).

Article 2. Procedures for Procuring Services

§ 13875. Publication of Announcement.

(a) The Executive Officer shall annually publish an announcement of expected needs for services of an architectural, landscape architectural, engineering, land surveying, environmental or construction–project management nature. The announcement shall be made in a statewide publication of the respective professional societies and in the State Contracts Register.

(b) The announcement shall contain the following information:

The contract identification number, a description of the work to be performed; all submission deadlines for statements of qualification and other required steps in the contract process, including the location and estimated duration of the contract, where appropriate; any eligibility requirements and preferences; a statement that the contract will be awarded without discrimination based on race, color, religion, sex or national origin; and the department, name, and telephone number of the person or persons to contact for further submittal information.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Sections 4526, 4527, 14827 and 14827.2, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order including amendment of subsections (a) and (b) and deletion of subsection (c), resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
3. Change without regulatory effect amending subsection (a) filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).

§ 13876. Selection Criteria.

The Executive Officer shall select contractors based on the following criteria:

(1) demonstrated competence, including the firm's past experience with similar projects; the education and experience of key personnel, including principals to be assigned and the proposed level of their participation; the firm's capability to adequately analyze the project; the firm's ability to meet the project schedule; the longevity of the firm and amount of staff turnover; and the nature and quality of the firm's past completed work.

(2) specialized qualifications for the services to be performed;

(3) small business status of the contractor submitting a statement of qualification;

(4) D/VBEs status of a contractor submitting a statement of qualification; and

(5) the good faith effort of the contractor to subcontract with D/VBEs to assist the Conservancy in its efforts to meet statewide participation goals for D/VBEs as set forth in Public Contract Code section 10115. These factors shall be weighed by the Executive Officer according to the nature of the project, the needs of the Conservancy, and the complexity and special requirements of the specific project.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Section 10115.3(b), Public Contract Code. Reference: Sections 4526 and 4527, Government Code. Section 10115.2, Public Contract Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order, including amendment of subsection (a) and deletion of subsection (b), resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
3. Change without regulatory effect amending subsections (4) and (5) filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).
4. Change without regulatory effect amending subsections (h)(4)–(5) filed 10–2–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 40).

§ 13877. Selection of Architectural, Landscape Architectural Engineering, Environmental, Land Surveying and Construction–Project Management Firms.

For each proposed project, the Executive Officer shall evaluate statements of qualifications and performance data on file with the Conservancy, together with those statements that may be submitted by other firms regarding a proposed project. The Executive Officer shall then request any other necessary information from, and conduct discussions with, no fewer than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. To the maximum extent feasible consistent with the criteria established under section 13876, small businesses and D/VBEs that have submitted statements of qualification to the Conservancy shall be included among the firms with which these discussions are conducted. From the firms with which discussions are held, the Executive Officer shall select no fewer than three, in order of preference, based upon the criteria established in section 13876, determined to be the most highly qualified to provide the services required.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order including amendment resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
3. Change without regulatory effect amending section heading and section filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).

4. Change without regulatory effect amending section filed 10–2–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 40).

§ 13878. Negotiation of Contracts.

The Executive Officer shall attempt to negotiate a contract with the best qualified firm at compensation whichthe Executive Officer determines is fair and reasonable to the State of California. If the Executive Officer is unable to do so, negotiations with that firm shall be terminated. The Executive Officer shall then proceed in the same fashion with the other firms on the list established by the Executive Officer pursuant to section 13877, in order of ranking. If the Executive Officer is unable to negotiate a satisfactory contract with any of the selected firms, the Executive Officer may select additional firms in the manner prescribed above and continue the negotiation process.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order including amendment resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13879. Emergency.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13880. Small Business Participation.

The Executive Officer shall provide to small business firms that have indicated an interest copies of announcements for projects. Failure of the Executive Officer to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order including repeal of former section 13880, and renumbering and amendment of former section 13881 to section 13880, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13881. Unlawful Activities and Conflict of Interest.

Practices which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration are prohibited. Additionally, a Conservancy employee shall not participate in the selection process if the employee has a relationship of a type specified in section 87100 of the Government Code, with a person or business entity seeking a contract subject to this chapter.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order, including renumbering and amendment of former section 13881 to section 13880 and renumbering of former section 13882 to section 13881, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13882. Unlawful Activities and Conflict of Interest.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 4526, Government Code. Section 87100, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including renumbering of former section 13882 to section 13881, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

Article 3. Disabled Veteran Business Enterprise Participation Goals for Contracts with Private Architectural, Landscape Architectural, Engineering, Land Surveying, Construction–Project Management, and Environmental Services Firms

§ 13890. Disabled Veteran and Minority and Women Business Enterprise Goals.

Contracts awarded under this chapter shall have statewide participation goals of not less than three (3) percent for DVBEs as specified in Public Contract Code section 10115.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Section 10115, Public Contract Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including amendment resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
4. Change without regulatory effect amending article heading, section heading and section filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).
5. Change without regulatory effect amending article 3 heading and section filed 10–2–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 40).

§ 13891. Certification.

If a contractor proposes to utilize a D/VBE, the contractor shall execute the following certification: "I hereby certify that, to the best of my knowledge and belief, each firm listed as a DVBE meets the relevant definition set forth in section 999(g) of the Military and Veterans Code and has been certified as such by the Office of Small Business Certification and Resources." M/WBE meets the relevant definition set forth in Public Contract Code section 10115.1."

NOTE: Authority cited: Section 31102, Public Resources Code. Section 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Sections 10115, 10115.1, 10115.2, Public Contract Code. Section 4527, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including repeal of former section 13891, and renumbering and amendment of former section 13892 to section 13891, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
4. Change without regulatory effect amending section filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).
5. Change without regulatory effect amending section filed 10–2–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 40).

§ 13892. Contract Audits.

All contacts awarded by the Conservancy in accord with this chapter shall include a provision which in substance provides the following:

The Conservancy or its delegatee may review, obtain, and copy all records pertaining to performance of the contract. The contractor shall provide the Conservancy or its delegatee with any relevant information requested and shall permit the Conservancy or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code section 10115 et seq., and title 14, California Code of Regulations, section 13870, et seq. The contractor shall maintain these records for a period of three years after final payment under the contract.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Sections 10115 and 10115.3(a), Public Contract Code. Sections 4526 and 10532, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order, transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including renumbering and amendment of former section 13892 to section 13891 and renumbering and amendment of former section 13893 to section 13892, resubmitted to OAL on 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13893. Adjudicatory and Investigatory Procedures.

Nothing in these regulations shall be construed to impair the right of the State of California in any respect to initiate adjudicatory or investigatory procedures available under existing provisions of law or otherwise lawfully available for the purpose of ensuring compliance with the requirements of Public Contract Code section 10115, et seq., and attendant rules and regulations.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Sections 10115 and 10115.3(a), Public Contract Code. Section 4526, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including renumbering and amendment of former section 13893 to section 13892 and renumbering and amendment of former section 13894 to section 13893, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

§ 13894. Exemption for Certain Contracts.

NOTE: Authority cited: Section 31102, Public Resources Code. Section 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Sections 10115 and 10115.2(c), Public Contract Code. Section 4526, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including renumbering and amendment of former section 13893 to section 13892 and renumbering and amendment of former section 13895 to section 13894, resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).
4. Change without regulatory effect repealing section filed 5–13–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 20).

§ 13895. Exemption for Certain Contracts.

NOTE: Authority cited: Section 31102, Public Resources Code. Sections 10115.2(c), 10115.3(b), Public Contract Code. Section 4526, Government Code. Reference: Sections 10115, 10115.2, Public Contract Code. Section 4527, Government Code.

HISTORY

1. New section filed 2–2–90 as an emergency; operative 2–2–90 (Register 90, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 6–4–90.
2. Certificate of Compliance as to 2–2–90 order transmitted to OAL 5–10–90, disapproved by OAL on 6–11–90 (Register 90, No. 34). Repealed by operation of Government Code section 11346.1(g), effective 6–11–90 (Register 90, No. 34).
3. Certificate of Compliance as to 2–2–90 order including renumbering and amendment of former section 13895 to section 13894 resubmitted to OAL 11–20–90, approved and filed 12–19–90 (Register 91, No. 10).

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Division 5.7. Santa Monica Mountains Conservancy

Chapter 1. Project Plans

§ 13905. Content of Project Plans.

Depending on the type of project, all or part of the following shall be required:

(a) A concise description of the project site, including site maps, topographic maps, soils and geological hazard maps, as appropriate, and a regional location map.

(b) A listing of the governmental entities with jurisdiction over the project.

(c) A statement of the planning objectives and principles sought to be achieved by the project. The statement shall include a discussion of the comparability of the project with all applicable local land use plans, its conformity with the Santa Monica Mountains Comprehensive Plan, and whether amendments to either local plans or the Comprehensive Plan are required.

(d) A designation of and plan for the various land uses proposed. Where applicable, this shall include a site building plan or information concerning how such a site plan will be determined. The project plan may include additional development guidelines, proposed conditions, covenants and restrictions, and provision for plan flexibility in light of changing circumstances.

(e) A detailed site analysis need not be prepared for the project plan unless it is material to the determination of whether the Conservancy should embark on the project. In any case a detailed site analysis shall be performed prior to actual development of any property acquired.

(f) A listing of the government agencies, organizations and private parties consulted in the preparation of the project plan.

(g) An analysis of the economic feasibility of the proposed project.

NOTE: Authority cited: Section 33209, Public Resources Code. Reference: Section 33200, *et seq.*, Public Resources Code.

HISTORY

1. New Chapter 1 (Section 13905) filed 3-8-82; effective thirtieth day thereafter (Register 82, No. 11). For prior history, see Chapter 5 (Sections 14004–14015): Registers 81, No. 47 and 80, No. 20.

Chapter 2. Santa Monica Mountains Conservancy—Conflict of Interest Code

§ 13950. General Purpose.

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix in which members and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the Santa Monica Mountains Conservancy.

Designated employees shall file statements of economic interests with the agency who will make the statements available for public inspection and reproduction. (Gov. Code Section 81008). Upon receipt of the statements of Conservancy Members and the Chief Executive Officer, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

Definitions

Jurisdiction—refers to the Santa Monica Mountains Zone as defined by Public Resources Code Section 33105

Appendix B

Designated Position	*Disclosure Category*
Conservancy Members	1, 2, 3
Executive Director	1, 2, 3
Deputy Director	1, 2, 3
Staff Counsel(s)	1, 2, 3
Division Chief(s)	1, 2, 3
Deputy Division Chief(s)	1, 2, 3
Conservancy Advisory Committee Members	1, 2, 3
Consultants*	1, 2, 3

Appendix C

General Provisions

When a designated employee is required to disclose investments and business positions, and sources of income, he/she need only disclose investments in business entities and sources of income which do business in the jurisdiction, plan to do business in the jurisdiction, or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix B.

Disclosure Categories

Category 1: All interests in real property.

Category 2: All investments and business positions in business entities, and income from any source which engages in land development, construction or the acquisition, sale or lease of real property within the defined Conservancy's jurisdiction.

Category 3: All investments and business positions in business entities and sources of income of the type utilized by the Santa Monica Mountains Conservancy to provide services, supplies or materials.

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director may determine in writing that a particular consultant, although a "designated Position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

NOTE: Authority and reference cited: Section 87300, Government Code.

HISTORY

1. New chapter 2 (section 13950 and Appendix) filed 7-15-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-4-81 (Register 81, No. 29).
2. Change without regulatory effect amending section filed 2-20-92 pursuant to section 100, title 1, California Code of Regulations. Approved by Fair Political Practices Commission 10-16-91 (Register 92, No. 13).
3. Amendment of section and appendices B and C filed 5-15-95; operative 6-14-95. Approved by Fair Political Practices Commission 3-20-95 (Register 95, No. 20).
4. Editorial correction (Register 95, No. 35).

Chapter 4. Project Initiation

NOTE: Authority cited: Sections 11373 and 11374, Government Code and Division 23 (commencing with Section 33000), Public Resources Code. Reference: Sections 11421 and 11422, Government Code.

HISTORY

1. New Division 5.7 (Chapters 1–3, Sections 13950–13984, not consecutive) filed 12-9-77; effective thirtieth day thereafter (Register 77, No. 50).
2. Division 5.7 (Chapters 1–4, Sections 13950–13994, not consecutive) expired by own terms per legislative mandate.
3. New Division 5.7 (Chapter 4, Sections 13996–14003 and Chapter 5, Sections 14004–14015) filed 5-16-80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9-14-80.

4. Chapter 4 (Sections 13996–14003) repealed by operation of Section 11346.1(g), Government Code (Register 81, No. 47).

Chapter 5. Project Plans

NOTE: Authority cited: Sections 11373 and 11374, Government Code and Division 23 (commencing with Section 33000), Public Resources Code. Reference: Sections 11421 and 11422, Government Code.

HISTORY

1. New Chapter 5 (Sections 14004–14015) filed 5–16–80 as an emergency; effective upon filing (Register 80, No. 20). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 9–14–80.
2. Chapter 5 (Sections 14004–14015) repealed by operation of Section 11346.1(g), Government Code (Register 81, No. 47).

* * *

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Title 14. Natural Resources

Division 5.8. San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy

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Division 5.8. San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy

Chapter 1. San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy

§ 14020. Conflict of Interest Code.

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2 California Code of Regulations, Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

Designated employees shall file their statements of economic interests with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy. Upon receipt of the statements of members of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, the Conservancy shall make and retain copies and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and made available for public inspection and reproduction. (Gov. Code, § 81008).

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302, Government Code.

HISTORY

1. New division 5.8, chapter 1 (section 14020), section and Appendices A and B filed 5–14–2001; operative 6–13–2001. Approved by Fair Political Practices Commission 4–3–2001 (Register 2001, No. 20).

Appendix A

Designated Positions	*Assigned Disclosure Categories*
Chairperson, Vice–Chairperson, all Board Members and Designees	A
Consultants paid by the Conservancy[1]	A
Executive Officer	A

[1]With respect to consultants the Executive Officer, however, may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Appendix B

Disclosure Categories

Category A

Persons in this category are required to report:

1) all real property or an interest in real property located within or not more than two miles from the boundaries of Los Angeles and Orange Counties.
2) all investments, sources of income, and business positions in entities which are of the type which provide goods, services, equipment, leased space, materials, supplies or machinery to the Conservancy.

Chapter 2. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 14021. Definitions.

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

(b) "Small Business" means a firm that complies with the provisions of Government Code Section 14837.

(c) "Executive Officer" means the Executive Officer of the San Gabriel and Lower Los Angeles Rivers Conservancy.

(d) "Conservancy" means the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy, established pursuant to the provisions of the Public Resources Code, commencing with Section 32600.

(e) "Architectural, landscape architectural, engineering, environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.

(f) The term "Disabled Veteran Business Enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New chapter 2 (sections (14021–14032) and section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14022. Selection Criteria.

The Executive Officer shall utilize selection criteria for each proposed project which will comprise the basis for the selection of eligible firms to perform the required services. The criteria shall include such factors as:

(a) Professional experience of the firm in performing services of similar nature.

(b) Quality and relevance of recently completed or ongoing work.

(c) Reliability, continuity, and location of firm to the project site.

(d) Staffing capability.

(e) Education and experience of key personnel to be assigned.

(f) Knowledge of applicable regulations and technology associated with the services required.

(g) Specialized experience of the firm in the services to be performed.

(h) Participation as small business firm.

(i) Other factors the Executive Officer deems relevant to the specific task to be performed.

These factors shall be weighted by the Executive Officer according to the nature of the proposed project, the complexity and special requirements of the specific services or project, and the needs of the Conservancy.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14023. Announcement of Project.

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and through the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, as a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Conservancy, and the final response date for receipt of statements

from firms of their demonstrated competence and professional qualifications.

(c) The Executive Officer shall identify potentially qualified small business firms interested in contracting with the Conservancy, and provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Executive Officer to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14024. Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Executive Officer shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in Section 14022 of these regulations, and rank, in order of preference, the firms determined to be eligible to perform the required services.

(b) The Executive Officer shall conduct discussions with at least the three most eligible firms, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Executive Officer shall select, in order of preference, not less than three firms deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14025. Estimate of Value of Services.

(a) Before entering into discussion with any firm selected pursuant to section 14024 of these regulations, the Executive Officer shall prepare, or direct the preparation of, an estimate of the value of the proposed project, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of section 14027 of these regulations, and shall not be disclosed until after the award of the contract or the abandonment of the negotiation process for the services to which it relates.

(b) At any time that the Executive Officer determines the estimate of value of services to be unrealistic for any reason, the Executive Officer shall require the estimate to be reevaluated and, if deemed necessary, modified.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14026. Statewide Participation Goals.

In the negotiation of a satisfactory contract as provided in section 14027 of these regulations, the best qualified firm must meet the statewide participation goal of not less than 3 percent for disabled veteran business enterprises, or demonstrate that a good faith effort was made to meet it, in order to comply with the statewide participation goals as required by the regulations contained in Title 2, California Code of Regulations, Sections 1896.61–1896.64.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14027. Negotiation.

(a) From among the firms selected through the procedure described in section 14024 of these regulations, as those most highly qualified to perform the services required, the Executive Officer shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable.

(b) If the Executive Officer is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Conservancy determines is fair and reasonable, then negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) If the Executive Officer is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b) immediately above, the Executive Officer shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Executive Officer shall abandon the negotiation process for the requested services.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14028. Amendments.

If the Executive Officer determines that a change in the contract is necessary during the performance of the services being provided, then the contracting parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the contract terms, conditions and specifications for the services involved, with a reasonable adjustment also in the compensation provided for the services.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14029. Contracting in Phases.

If the Executive Officer determines it is necessary or desirable for the project to be performed in separate phases, the Executive Officer may negotiate a partial compensation for the initial phase of the services required; provided, however, that the Executive Officer first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Conservancy may, at its option, utilize the firm to perform other phases of the services at a compensation which the Conservancy determines is fair and reasonable, to be later negotiated and included in a mutually acceptable written agreement. In the event that the Conservancy exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter with regard to estimates of value of services and negotiation shall similarly be followed.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14030. Executive Officer's Power to Require Bids.

If the Executive Officer determines that the services are technical in nature and involve little professional judgement and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Chapter.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14031. Unlawful Consideration.

Each contract shall include a provision by which the contracting firm warrants to the state that the contract was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any Conservancy officer or employee. Failure to adhere to this

warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Conservancy under the default provisions of the contract.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

§ 14032. Prohibited Relationships.

No Conservancy employee, officer or Board member who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 32613, Public Resources Code. Reference: Section 32614, Public Resources Code.

HISTORY

1. New section filed 1–9–2002; operative 2–8–2002 (Register 2002, No. 2).

* * *

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Division 6. Resources Agency

Article 1. Definitions

§ 14100. Definitions.

All terms defined by Chapters 1 and 2, Statutes of 1971, First Extraordinary Session, and any amendments thereto, shall for the purpose of these rules and regulations be deemed to be used with the same force and effect as in said chapters except as expressly modified herein.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16142, 16144, 16154 and 65570, Government Code.

HISTORY

1. New Division 6 (Chapter §§ 14100 through 14125, not consecutive) filed 7–12–72; effective thirtieth day thereafter (Register 72, No. 29).
2. Amendment filed 10–2–73; effective thirtieth day thereafter (Register 73, No. 40).
3. Repealer of foreword for division 6 and amendment of NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).

§ 14101. "Act" Defined.

"Act" as used in these rules and regulations consists of Sections 16140–16154, 51200–51297.4, 66474.4, 65563, 65570 of the Government Code, Section 33321.5 of the Health and Safety Code, and Sections 421–430.5 of the Revenue and Taxation Code and any amendments thereto.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16142, 16144, 16154 and 65570, Government Code.

HISTORY

1. Amendment filed 10–2–73; effective thirtieth day thereafter (Register 73, No. 40).
2. Amendment of section and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).
3. Amendment filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14102. Terms Defined.

As used in these regulations, the following terms shall have the meanings noted:

(a) "Secretary" means the Secretary for Resources, State of California.

(b) "Governing Body" means the governing body of any county, city, or city and county.

(c) "Authorized Representative" means the individual appointed and authorized by resolution of the governing body to act on behalf of the governing body.

(d) "Effective Date" means the last day on which an instrument meeting requirements under Section 422 of the Revenue and Taxation Code can be signed or accepted and recorded, and the instrument is effective for assessment purposes and state payment in the forthcoming fiscal year.

(e) "Application Report" means the application and the accompanying material described in these regulations submitted to the Secretary for the determination of the eligibility and entitlement of a governing body for state payments under the Open Space Subvention Act.

(f) "Contract," "Agreement," "Scenic Restriction," and "Open Space Easement," shall have the meanings as defined in Section 421 of the Revenue and Taxation Code.

(g) "Enforceable Restriction" shall have the meaning as defined in Section 422 of the Revenue and Taxation Code.

(h) "Prime agricultural land" has the same meaning as provided in Government Code section 51201(c).

(i) "Director" shall mean the Director of the Department of Conservation.

(j) "Continuing" contract shall mean a contract that is not undergoing nonrenewal.

(k) "Non–prime land" shall mean any land other than prime agricultural land.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16142, 16144, 16154 and 65570, Government Code.

HISTORY

1. New subsections (h)–(j) and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).
2. New subsection (k) filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

Article 2. General Provisions

§ 14110. Filing of Application Reports.

Application reports for state payment shall be filed with the Secretary on or before October 31 of the year in which application is made according to instructions and on forms provided by the Secretary.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Section 16144, Government Code.

HISTORY

1. New NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).

§ 14110.1. County Filing of Application Reports for Lands Within Cities.

A county may claim on its application restricted acreage within the boundaries of a city, if:

(a) the county and each affected city adopt concurrent resolutions authorizing the county to claim restricted acreage on behalf of the city, and acknowleging a joint responsibility to enforce the contracts pursuant to section 51251 of the Government Code;

(b) each affected city shall include in the resolution required by subsection (a) verification that rules governing administration of the contracts, pursuant to Government Code Section 51231, have been adopted;

(c) the county shall identify the city contract lands and participating cities on the county application and map, and;

(d) the county shall include the resolutions and map with each application report pursuant to Section 14110.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16142, 16144, 16154 and 65570, Government Code.

HISTORY

1. New section filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).

§ 14111. Material to Accompany Application Reports.

Each application report filed with the Secretary shall include the following material:

(a) A resolution by the governing body authorizing the filing of the report and designating an authorized representative.

(b) A tabulation on Forms 100 (4/01), 101 (8/02), 102 (8/02), 102A (4/01), 103 (8/02), 104 (4/01), 105 (4/01), 106 (4/01), 107 (4/01), 108 (4/01), 109 (4/01), 110 (4/01), 111 (4/01), 112 (4/01), 113 (8/02), and 114 (4/01) provided by the Secretary, and incorporated by reference, summarizing the number of acres of land under the governing bodies' regulatory jurisdiction on the effective date, by each of the various categories as set forth in Section 422 of the Revenue and Tax Code qualified for state payments and the amounts of the state payments claimed pursuant to Section 16144 of the Government Code in accordance with the provisions in these regulations. The tabulation of non–prime lands shall indicate, by acreage, the section 14112(c) category under which payment is requested. The tabulation shall be certified by the authorized representative that the data given are correct and meet the criteria set forth in Section 14112 herein.

(c) A map showing the lands in the categories tabulated in (b) above. For the application report submitted for fiscal year 2000/2001, the map may be submitted in any reasonable form that certifies the land for which subvention payment is claimed. Beginning with the application report submitted for fiscal year 2001/2002, the map must be prepared as follows:

(1) The map must include the following information:

(A) The location and category of all lands tabulated in accordance with sub–section (b), above.

(B) The location and category of all enforceably restricted lands enrolled under contracts entered into pursuant to Section 51240 of the Gov-

ernment Code that are not otherwise tabulated in accordance with sub–section (b), above.

(C) If applicable, the location and type of enforceable restriction, as defined in Revenue and Taxation Code Section 422 for a scenic restriction entered into prior to January 1, 1975, an open space easement, or a wildlife habitat contract for which subventions are claimed.

(D) The boundaries of agricultural preserves established pursuant to Section 51230 of the Government Code.

(2) For all maps submitted pursuant to this section, the following production standards must be followed:

(A) The boundaries of all lands specified by sub–section (1), above, must be clearly and precisely delineated.

(B) Areas of 40 acres or more of lands specified by sub–section (1), above, must be shown on the map.

(C) Delineation within each parcel must be made, whenever possible, to indicate distinctions between land categories that exist within the parcel or parcels.

(3) Local governmental jurisdiction that use a computer–based mapping system for the purpose of mapping the location of lands specified by sub–section (1), above, may submit the map in a digital, electronic file format that is accessible by the Department. For map submittals of this type, the following additional production standards must be followed:

(A) Boundaries of land specified by sub–section (1), above, which are bounded by physical or cultural features, must accurately coincide with those features as the features are represented on reliable and readily available base maps such as the United States Geological Survey Topographic Quadrangle Map Series.

(B) The delineation of lands specified under subsection (1), above, must be based on original information no smaller than 1:125,000 in scale.

(C) The digital, electronic map file must include written documentation containing the following information: 1) the scale, map projection system, if any, and map coordinate system, if any, that was used to create and store the digital, electronic map file; and 2) a description of the computer–based mapping system used to create the digital, electronic map file, including the name of any proprietary file format.

(4) Local governmental jurisdictions that do not use a computer–based mapping system for the purpose of recording the location of lands specified under sub–section (1), above, must submit a map produced using a stable, durable material such as presentation–grade drafting film or paper. For map submittals of this type, the following additional production standards must be followed:

(A) Prominent physical and cultural features, such as county or city boundaries, major transportation routes, drainage courses, inland water bodies, and major population centers, must be clearly represented. Wherever the boundaries of lands specified by sub–section (1) above, coincide with such features, the boundaries must be represented in such a way that it is clear to the reader of the map that the boundary in fact coincides with the physical or cultural feature.

(B) The preferred scale for production is 1:100,000; the map must be produced at a scale no smaller than 1:125,000 and no larger than 1:60,000. The scale used must be clearly identified on the map.

(C) The type of map projection system used must be clearly identified on the map.

(D) Labeled reference marks or grid lines must be used whenever possible to indicate the location of the area depicted on the map relative to a commonly used coordinate system such as the public lands survey system or latitude and longitude.

(5) Local governmental jurisdictions may request consultation and technical assistance from the Department for the purpose of meeting the requirements of sub–sections (1–4) above.

(6) Local governmental jurisdictions that submit maps substantially meeting the criteria listed under sub–sections (1–4) above, may, on or before December 31 of each year, request that the Department incorporate the map submitted pursuant to this section into the Department's own computer–based mapping system. Contingent upon the availability of necessary resources the Department may incorporate within its computer–based mapping system the original map as submitted by the local governmental jurisdiction. If the local governing body chooses to adopt this file as its official map for purposes of meeting the requirements of this section, the following criteria shall apply in lieu of the normal requirement to submit an original map with each annual application report:

(A) For the year immediately following that for which the local governmental jurisdiction's initial map file with the Department is current, and for every second year thereafter, the local governmental jurisdiction must submit copies of assessor parcel maps that depict the location of parcels affected by changes to the number of acres of land specified under sub–section (1) above.

(B) For the second year immediately following that for which the local governmental jurisdiction's initial map file is current, and for every second year thereafter, the local governmental jurisdiction must submit materials needed to update the map file. The materials supplied by the local governmental jurisdiction for this purpose must be adequate to allow the map file to be updated in a manner consistent with the guidelines listed under subsections (1–4) above.

(d) A sample of each form of contract, agreement, scenic restriction, or open space easement used for placing land under enforceable restrictions if:

(1) The format of the document has been changed since the last application report; or

(2) A governing body is submitting an application report for the first time.

(e) If changed since the previous year's application report was filed with the Secretary, or not otherwise previously provided, the governing body's rules for the administration of agricultural preserves, including an enumeration of compatible uses as required by Government Code Section 51231 and any amendments thereof, as well as the governing body's designation of minimum parcel sizes for lands in agricultural preserves and/or subject to contract and rules governing the subdivision of lands subject to contract.

(f) If changed since the previous year's application report, and unless otherwise available through the California Environmental Resources Evaluation System (CERES), the open space element pursuant to Article 10.5, Chapter 3, Division 1 of Title 7 of the Government Code of the governing body's general plan, including a map of open space lands designated in the open space element, if available.

(g) A listing of all enforceable restrictions which were terminated, including the acreage involved, in the intervening year through any of the following:

(1) completion of contract nonrenewal pursuant to Government Code Section 51246.

(2) annexation pursuant to a city protest filed prior to January 1, 1991 pursuant to Government Code sections 51243–51243.5 The County shall also provide the name of the City and date of the resolution pursuant to Government Code Section 56844.2 that the City will not to succeed to the contract.

(3) contract rescision pursuant to Government Code Section 51256.

(4) cancellation pursuant to Government Code Sections 51280–51286 and 51297. The City or County shall specify the date of the final cancellation and the amount of the cancellation fee.

(5) acquisition for a public improvement pursuant to Government Code Section 51295, including a brief description of the public improvement.

(h) A list of contracts and corresponding acreage for which nonrenewal has been initiated in the intervening year pursuant to Government Code Section 51245.

(i) A list of all continuing contracts or other enforceable restrictions on land annexed by a city pursuant, including the name and address of the city assuming jurisdiction over the restriction.

(j) Such other material as the Secretary may require.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16142, 16142.1, 16144, 16154, 51207 and 65570, Government Code.

HISTORY

1. Amendment of subsection (b) filed 10–2–73; effective thirtieth day thereafter (Register 73, No. 40).
2. Amendment of subsections (a)–(c), new subsections (c)(1)–(c)(6)(B) and (e)–(i), subsection relettering, and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).
3. Amendment of subsection (b) and amendment of NOTE filed 10–3–2001; operative 10–3–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 40).
4. Amendment of subsections (b) and (g)(4) and amendment of NOTE filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14112. Determination of Eligibility.

(a) Eligibility of land for payment shall be determined in accordance with the provisions of the Act and these regulations. Land, which in the opinion of the Secretary is eligible, must be subject to an enforceable restriction and must have been assessed pursuant to Section 423, 423.3, 423.4, 423.5, or 426 if previously assessed under Revenue and Taxation Code section 423.4 and eligible pursuant to Government Code section 16142(c), and the governing body having jurisdiction over the land must have a local open space plan as required by Section 65563 of the Government Code. However, to be eligible, the land assessed pursuant to one of the above code sections need not be designated as open space in the plan, except as noted in the following subdivisions.

(b) The Secretary shall be the final judge of whether nonprime land devoted to open space use is of statewide significance. Only those nonprime lands devoted to open space use as defined in Section 51201 and Section 65560 of the Government Code which are designated for open space use in a local open space plan and which meet the criteria set forth in subdivision (c) shall be considered as land devoted to open space use of statewide significance and eligible for payment.

(c) Land shall be deemed to be devoted to open space use of statewide significance within the meaning of this section and Section 16143 of the Government Code if it meets at least one of the following criteria:

(1) Areas of outstanding scientific, scenic and recreation value.

(2) Areas which are required as habitat for significant fish and wildlife resources, including rare and endangered species.

(3) Forest and agricultural lands which are judged to be of major importance in meeting future needs for food, fiber, and timber.

(4) Areas which provide green space and open areas in and around high–density metropolitan development.

(5) Areas which are required to provide needed access to coastal beaches, lakeshores, and riverbanks.

(6) Areas which require special development regulation because of hazardous or special conditions, such as earthquake fault zones, unstable slide areas, flood plains, and watersheds.

(7) Areas which serve as connecting links between major public recreation and open space sites, such as utility easements, streambanks, trails, and scenic highway corridors.

(8) Areas of major historic or cultural interest.

(d) When determining whether enforceably restricted land meets the definition of prime agricultural land pursuant to Government Code section 51201(c)(1) and (2), a participating local government shall rely on the most current information suitable for that purpose. When determining whether enforceably restricted land meets the definition of prime agricultural land pursuant to Government Code section 51201(c)(3), (4) or (5), a participating local government shall rely on information derived from the assessment for the year in which the subvention claim is made, pursuant to subdivision (a) of this section."

(e) Agricultural conservation easements executed and approved pursuant to the provisions of Public Resources Code section 10200 through 10277 or Government Code sections 51256 and 51256.1 shall be eligible for payment.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16140, 16141, 16142, 16143, 51201, 51256 and 51256.1, Government Code; and Section 10211, Public Resources Code.

HISTORY

1. Amendment of subsection (d) filed 10–2–73; effective thirtieth day thereafter (Register 73, No. 40).
2. Amendment of section and new NOTE filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14113. Computation of the Amount of Entitlement.

The necessary computations to determine the amount of entitlement under the Act shall be made on a parcel–by–parcel basis by the governing body in accordance with Section 16142 of the Government Code, and the provisions of these regulations.

(a) To determine the total entitlement for each parcel that exceeds 40 acres, computations shall be made for all categories of open space land within the single parcel. Entitlements for parcels of 40 acres or less shall be determined by the category to which the major part of the area is assigned. Computations shall be made to the nearest 10 acres or less. Nothing in this subsection shall apply to any determination of the minimum legal size pursuant to Government Code Sections 51222, 66474.4, and/or any applicable State or local ordinance or rule regarding enrollment or subdivision of legal parcels subject to an enforceable restriction.

(b) The following types of lands shall not be entitled to payment:

(1) Acreage devoted to residential use and assessed pursuant to Section 428 of the Revenue and Taxation Code.

(2) Acreage assessed under Section 426, unless previously assessed under Revenue and Taxation Code section 423.4 and eligible pursuant to 16142(c) of the Government Code;

(3) Acreage enforceably restricted pursuant to the Open Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of the Government Code);

(4) Parcels subject to contracts which are of less than 40 acres for Open Space Land of Statewide Significance, unless such parcels are contiguous to other restricted lands comprising more than 40 acres total, are subject to a written joint management agreement involving noncontiguous parcels which total more than 40 acres, or the board or council specifically finds these parcels will sustain commercial agricultural use; or

(5) Contracted acreage which is valued lower under Revenue and Taxation Code Section 110.1 than under Revenue and Taxation Code Section 423, 423.3 or 423.5.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16140, 16141, 16142 and 51222, Government Code.

HISTORY

1. Amendment filed 10–2–73; effective thirtieth day thereafter (Register 73, No. 40).
2. Amendment of section and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).
3. Amendment of subsection (b)(2) filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14114. Retention of Computations.

Governing bodies shall retain all computations and supporting documents for determining the amount of entitlement and will make them available to the Secretary, Director, State Board of Equalization or State Controller for audit upon request. Where such documents are otherwise privileged or confidential, such records shall not become public records upon transfer to a State agency as provided in this subsection. Retention of records regarding assessment of lands shall be for a period of six years. Retention of other records regarding contract administration and enforcement, including but not limited to compatible use determinations, subdivision and permit approvals, and cancellation decisions and valuations pursuant to Section 51283 of the Government Code, shall continue as long as the effected contract remains in effect plus nine years.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16146 and 16154, Government Code.

HISTORY

1. Amendment of section and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).
2. Amendment filed 1–21–2003; operative 1–21–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14115. Incomplete Application Records.

If the Secretary determines that an application report is improperly completed or incomplete, the governing body, upon written notification

by the Department, shall re-submit or submit additional information requested by the Department.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 16144 and 16146, Government Code.

HISTORY

1. Amendment filed 10-2-73; effective thirtieth day thereafter (Register 73, No. 40).
2. New NOTE filed 5-19-2000; operative 6-18-2000 (Register 2001, No. 3).
3. Renumbering of former section 14115 to section 14116 and renumbering of section 14116 to section 14115, including amendment of section heading, section and NOTE, filed 1-21-2003; operative 1-21-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14116. Review by Secretary.

Upon receipt of a properly completed application report, the Secretary will review it to determine the eligibility of the local government to receive payment and the amount to which it is entitled in accordance with the provisions of Section 16144 of the Government Code.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Section 16144, Government Code.

HISTORY

1. New NOTE filed 5-19-2000; operative 6-18-2000 (Register 2001, No. 3).
2. Renumbering of former section 14116 to section 14115 and renumbering of former section 14115 to section 14116 filed 1-21-2003; operative 1-21-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

§ 14117. Certification of Payment.

The Secretary, after determining the amount to which the governing body is entitled, shall certify the amount to the State Controller for payment.

(a) Annual entitlements may be certified for payment by the Secretary beginning in August of each year as the review of each application report pursuant to Section 14110 is completed, and in the order that each is determined to be complete and accurate.

(b) Application reports received after April 30 shall not be certified for payment by the Secretary until all application reports received pursuant to Section 14110 prior to April 30 have been certified for payment. The Secretary may delay payments on application reports received after April 30 until the following fiscal year. Notwithstanding Section 14118 reports received after October 31 of the following fiscal year are not eligible for payment.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Section 16144, Government Code.

HISTORY

1. Amendment of section and new NOTE filed 5-19-2000; operative 6-18-2000 (Register 2001, No. 3).

§ 14118. Adjustments.

(a) New or additional information pertaining to eligibility or entitlement may be submitted by a governing body at any time up to and including October 31 of the year following submission of a timely application report to which the information pertains. Based on this information, the Secretary may make supplemental reports to the State Controller in accordance with Section 16144 of the Government Code.

(b) Where the Secretary determines that an overpayment was made, deductions against an entitlement paid in accordance with provisions of Section 14113 may be made in subsequent years to correct such overpayment. When changes to entitlement claims are due to corrections in governing body records, or improvements to record-keeping systems, the governing body shall provide, when requested by the Secretary, documentation of the changes on a contract-by-contract or parcel-by-parcel basis. In addition, the Secretary may deduct cancellation fees which have not been collected or transmitted within the time frame required by Section 51283 of the Government Code.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Section 16144, Government Code.

HISTORY

1. Amendment filed 10-2-73; effective thirtieth day thereafter (Register 73, No. 40).
2. Amendment of section and new NOTE filed 5-19-2000; operative 6-18-2000 (Register 2001, No. 3).

§ 14119. Determination of Ineligibility; Failure to Enforce.

(a) In the event the Department finds that the Act as defined in this chapter, or any enforceable restriction, is violated by a county or city receiving open space subventions, the Department shall notify that city or county that the violation may result in a determination of ineligibility for open space subventions pursuant to Government Code 16146. Within 60 calendar days of receiving such notice, the city or county may request a hearing to contest the finding that a violation has occurred. Should the city or county fail to respond to this notice, otherwise fail to remedy the violation, or if the Department's finding of a violation be upheld following a hearing, the Director may certify to the controller that the city or county is ineligible to receive open space subventions.

(b) Nothing in this section shall limit the Secretary or Director's authority to otherwise pursue enforcement actions authorized by other state laws including but not limited to Government Code sections 16147 or 51294. A determination regarding subventions pursuant to this section shall not be construed as terminating the enforceable restriction in question.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Section 16144, Government Code.

HISTORY

1. New section filed 5-19-2000; operative 6-18-2000 (Register 2001, No. 3).

§ 14120. Hearings.

(a) Upon receiving notification of a violation pursuant to section 14119, or notification of an adjustment pursuant to section 14118, the city or county shall have the right to request an informal hearing with the Department of Conservation pursuant to Government Code section 11445.10 et seq.

(b) Within 60 calendar days from receipt of a notification of a violation or notification of an adjustment, the city or county may deliver or mail to the director of the Department, a written request for a hearing. Such request shall include a statement of the basis for contesting the notice.

(c) The director of the department shall schedule the hearing no more than 45 calendar days from receipt of the city or county's written request, and shall notify the city or county in writing of the date set for the hearing.

(d) Failure to submit a written request for a hearing within 60 calendar days from receipt of a notification of a violation or an adjustment shall constitute a waiver of the city or county's right to a hearing.

(e) The director shall make a determination based upon review of the facts, information, and evidence presented at the hearing.

(f) The city or county shall be notified of the director's determination in writing within 15 calendar days from the date of the hearing.

NOTE: Authority cited: Sections 16146 and 65570, Government Code. Reference: Sections 16146 and 11445.20(c), Government Code.

HISTORY

1. New section filed 1-21-2003; operative 1-21-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

Article 3. Special Provisions

§ 14125. Waiver of Cancellation Fee for Terminating Open Space Easements and Agricultural Preserve Contracts.

In accordance with Sections 51061 and 51283 of the Government Code, when a governing body finds it in the public interest to waive the fee for abandoning open space easements or cancelling any Land Conservation Act contract or agreement for agricultural preserves and that such waiver or extension of time to pay following final cancellation otherwise comports with the requirements of Government Code sections 51061 or 51283, the governing body shall make a written request for approval of the waiver by the Secretary and provide the following information:

(a) Date of the public hearing as required by Sections 51284 and 51061 of the Government Code.

(b) A map showing the assessor's parcel number, size and location of the parcel and the relationship of the parcel to adjoining parcels.

(c) Present land use of the parcel.

(d) Proposed land use of the parcel and when the change in land use will occur.

(e) The amount of the cancellation or abandonment fee and the basis for its calculation, including how the valuation of the land pursuant to Subsections 51283(a) or 51061 was determined. A statement of the conditions shall be submitted for partial waivers.

(f) A narrative fully explaining the basis for cancellation or abandonment, including approved findings and a detailed summary of substantial evidence to support each finding, and the reason or reasons for determining that a waiver of the cancellation or abandonment fee is in the public interest pursuant to Sections 51283(c)(2) or 51061 of the Government Code.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 51061 and 51283, Government Code.

HISTORY

1. Amendment of section and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).

Chapter 2.5. Dredging Projects in San Francisco Bay

NOTE: Authority cited: Section 162, Harbors and Navigation Code.

HISTORY

1. New Chapter 2.5, Articles 1–5 (Sections 14200–14272, not consecutive) filed 12–19–75; effective thirtieth day thereafter (Register 75, No. 51).
2. Repealer of Chapter 2.5 (Article 1–5, Sections 14200–14272, not consecutive) filed 1–7–82; effective thirtieth day thereafter (Register 82, No. 2).

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

(State EIR Guidelines)

(Originally Printed 2–10–73)

Article 1. General

§ 15000. Authority.

The regulations contained in this chapter are prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 2108–3. Additional information may be obtained by writing:

SECRETARY FOR RESOURCES
ROOM 1311, 1416 NINTH STREET
SACRAMENTO, CA 95814

These Guidelines are binding on all public agencies in California.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code; *City of Santa Ana* v. *City of Garden Grove*, (1979) 100 Cal. App. 3d 521.

HISTORY

1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2–7–73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).
2. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15001. Short Title.

These Guidelines may be cited as the "State CEQA Guidelines." Existing references to the "State EIR Guidelines" shall be construed to be references to the "State CEQA Guidelines."

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. New section filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
2. Amendment filed 1–7–82; effective thirtieth day thereafter (Register 82, No. 2).
3. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
5. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15002. General Concepts.

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(b) Governmental Action. CEQA applies to governmental action. This action may involve:

(1) Activities directly undertaken by a governmental agency,

(2) Activities financed in whole or in part by a governmental agency, or

(3) Private activities which require approval from a governmental agency.

(c) Private Action. Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.

(d) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. See Section 15378.

(e) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. See Section 15004.

(f) Environmental Impact Reports and Negative Declarations. An environmental impact report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.

(1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. See Section 15064(a)(1).

(2) When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR. See Section 15070.

(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. See Section 15382. Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. See Section 15091.

(h) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project could cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

(1) Changing a proposed project;

(2) Imposing conditions on the approval of the project;

(3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;

(4) Choosing an alternative way of meeting the same need;

(5) Disapproving the project;

(6) Finding that changes in, or alterations, the project are not feasible.

(7) Finding that the unavoidable, significant environmental damage is acceptable as provided in Section 15093.

(i) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." See Section 15357.

(1) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial," and CEQA does not apply. See Section 15369.

(2) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another. See Section 15268.

(j) Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project. See Sections 15073, 15086, 15087 and 15088.

(k) Three Step Process. An agency will normally take up to three separate steps in deciding which document to prepare for a project subject to CEQA.

(1) In the first step the lead agency examines the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may prepare a notice of exemption. See Sections 15061 and 15062.

(2) If the project is not exempt, the lead agency takes the second step and conducts an initial study (Section 15063) to determine whether the project may have a significant effect on the environment. If the initial study shows that there is no substantial evidence that the project may have a significant effect, the lead agency prepares a negative declaration. See Sections 15070 et seq.

(3) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR. See Sections 15080 et seq.

(*l*) Certified Equivalent Programs. A number of environmental regulatory programs have been certified by the Secretary of the Resources Agency as involving essentially the same consideration of environmental issues as is provided by use of EIRs and negative declarations. Certified programs are exempt from preparing EIRs and negative declarations but use other documents instead. Certified programs are discussed in Article 17 and are listed in Section 15251.

(m) This section is intended to present the general concepts of CEQA in a simplified and introductory manner. If there are any conflicts between the short statement of a concept in this section and the provisions of other sections of these guidelines, the other sections shall prevail.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*, 13 Cal. 3d 68 (1974); *Running Fence Corp.* v. *Superior Court*, 15 Cal. App. 3d 400 (1975).

HISTORY

1. New section filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
2. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15003. Policies.

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)

(g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

(h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)

(i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692)

(j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. (*Laurel Heights Improvement Assoc. v. Regents of U.C.* (1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553)

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).
4. New subsections (g)–(j) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
5. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15004. Time of Preparation.

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

[The next page is 665.]

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Mount Sutro Defense Committee* v. *Regents of the University of California*, (1978) 77 Cal. App. 3d 20.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsections (b)(2)–(b)(2)(B), subsection renumbering, amendment of subsection (c), and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15005. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 75, No. 1.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15006. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of lead agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15083)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(*l*) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15152)

(n) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic environmental impact reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing environmental impact reports in plain language. (15140)

(r) Following a clear format for environmental impact reports. (15120)

(s) Emphasizing the portions of the environmental impact report that are useful to decision–makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on environmental impact reports as specific as possible. (15204)

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003 and 21083, Public Resources Code.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 80, No. 19.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of subsections (g), (m) and (u) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15007. Amendments.

(a) These guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content requirements in guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the guidelines beginning with the earlier of the following two dates:

(1) The effective date of the agency's procedures amended to conform to the new guideline amendments; or

(2) The 120th day after the effective date of the guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the guidelines beginning with the effective date of the guideline amendments.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082–21086, Public Resources Code; *Stevens* v. *City of Glendale*, 125 Cal. App. 3d 986.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 2. General Responsibilities

§ 15020. General.

Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the lead agency to accomplish. For example, a lead agency is responsible for the adequacy of its environmental documents. The lead agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082, 21082.1, Public Resources Code; *Russian Hill Improvement Association* v. *Board of Permit Appeals*, 44 Cal. App. 3d 158 (1975).

HISTORY

1. Repealer of Article 2 (Sections 15005 and 15006) and new Article 2 (Sections 15020–15025) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives.

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15022. Public Agency Implementing Procedures.

(a) Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these guidelines.

(2) Conducting initial studies.

(3) Preparing negative declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

(8) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(9) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA.

(b) Any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district.

(c) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(d) In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082, 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15023. Office of Planning and Research (OPR).

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources. People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 30 days after receiving a notice of preparation.

(f) OPR shall resolve disputes as to which agency is the lead agency for a project.

(g) OPR shall receive and file all notices of completion, determination, and exemption.

(h) OPR shall establish and maintain a database for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office. This database of notice information shall be available through the Internet.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.4, 21083, 21086, 21087, 21108, 21159.9 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (e) and new subsection (g) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. New subsection (h) and amendment of NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15024. Secretary for Resources.

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices required by certified state environmental regulatory programs.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.5, 21083, 21084, 21086, 21088 and 21152, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15025. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.

(3) Preparing a negative declaration or EIR.

(4) Determining that a negative declaration has been completed within a period of 180 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) The decisionmaking body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082, 21100.2 and 21151.5, Public Resources Code; *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Change without regulatory effect amending subsection (a)(4) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 3. Authorities Granted to Public Agencies by CEQA

§ 15040. Authority Provided by CEQA.

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, Etc., Dist.* v. *Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F.* v. *Mathews*, 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors* v. *City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY

1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15041. Authority to Mitigate.

Within the limitations described in Section 15040:

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1 and 21159.26, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi* (1978) 83 Cal. App. 3d 707; and *Laurel Hills Homeowners Assn. v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515.

HISTORY

1. Amendment of first paragraph, subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County*, 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill*, 121 Cal. App. 3d 203.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill*, (1981) 121 Cal. App. 3d 203.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15045. Fees.

(a) For a project to be carried out by any person or entity other than the lead agency, the lead agency may charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable under this section.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 4. Lead Agency

§ 15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subdivision (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending subsection (b) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the

public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Change without regulatory effect amending subsections (c) and (d) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(c) The Office of Planning and Research shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(d) Regulations adopted by the Office of Planning and Research for resolving lead agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(e) Designation of a lead agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Code of Regulations, Title 14, Sections 16000–16041.

HISTORY

1. Change without regulatory effect amending subsections (c) and (d) and amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
2. Change without regulatory effect amending section heading, section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. Amendment filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

Article 5. Preliminary Review of Projects and Conduct of Initial Study

§ 15060. Preliminary Review.

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with the Office of Planning and Research or the county clerk until the project has been approved.

(e) When a non–elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, 21152(b) and 21159.21, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
4. New subsections (b)(5) and (e) and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) The location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15′ or 7-1/2′ topographical map identified by quadrangle name).

(3) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(4) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption shall be filed with the Office of Planning and Research. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(2) When a local agency files this notice, the notice of exemption shall be filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with the Office of Planning and Research. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

(e) When a local agency determines that a project is not subject to CEQA under sections 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice with OPR identifying the section under which the exemption is claimed.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108, 21152 and 21152.1, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (c)(3) and subsection renumbering filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. New subsection (a)(2), subsection renumbering and amendment of subsections (c)(1)–(2) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
5. Change without regulatory effect amending subsections (c)(1), (c)(2) and (c)(4)(A) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
6. Amendment of subsection (a), new subsection (e) and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subdivision (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a)(2), new subsection (b)(3) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsections (b)(1)(C) and (f) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6

Cal.4th 1112; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)–(i)(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending subsections (g), (h)(1)(A), (h)(1)(C) and (h)(2) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
5. Change without regulatory effect repealing subsections (h)–(h)(4) and (i)(4), relettering and renumbering subsections, amending newly designated subsection (h)(1) and amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
6. Amendment of subsections (h)(1) and (h)(3) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
7. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state–owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code section 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission." Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.2, 21084 and 21084.1, Public Resources Code; and *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsections (c)(1), (c)(3), (d) and (e)(1)(B)2.–3. and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non–compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15065. Mandatory Findings of Significance.

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self–sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

(2) The project has the potential to achieve short–term environmental goals to the disadvantage of long–term environmental goals.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(b)(1) Where, prior to the commencement of preliminary review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

(2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:

(A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

(B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and

(C)1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or

2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

(c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:

(1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,

(2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,

(3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and

(4) where necessary, the requirement to adopt a statement of overriding considerations.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Amendment of section and NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending subsections (b)(1) and (c) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have preared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21064, 21064.5, 21080(c) and 21082.1, Public Resources Code; *Friends of B Street* v. *City of Hayward,* (1980) 106 Cal. App. 3d 988; *Running Fence Corp.* v. *Superior Court,* (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060–15069.8) and new Article 6 (Sections 15070–15075) filed 7–13–83; designated effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section

15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Change without regulatory effect amending subsections (c) and (f)(5) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
4. New subsection (f), subsection relettering and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091 and 21092.5, Public Resources Code; *Plaggmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. Amendment of subsection (b) filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; and *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

(f) When a non–elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1, 21096 and 21151, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. New subsection (f) and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(f), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name and the date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.

(6) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of de-

termination pursuant to subdivisions (d) and (e) above for local agencies, start a 30–day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met.

Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (f) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Amendment filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
5. Change without regulatory effect amending subsections (c)–(h) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15081.5. EIRs Required by Statute.

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse–derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subdivision (1) of the subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off–site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manges hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap–leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University, University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.09, 21083.8.1, 21151.1 and 21151.7, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (a)(1)(C) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15082. Notice of Preparation and Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send

to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.

(1) The notice of preparation shall provide the responsible and trustee agencies and the Office of Planning and Research with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15′ or 7 1/2′ topographical map identified by quadrangle name), and

(C) Probable environmental effects of the project.

(2) A sample notice of preparation is shown in Appendix I. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal that provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subdivision (a), each responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the Office of Planning and Research will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible or trustee agency, or the Office of Planning and Research fails by the end of the 30-day period to provide the lead agency with either a response to the notice or a well-justified request for additional time, the lead agency may presume that none of those entities have a response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, the Office of Planning and Research, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information that the responsible or trustee agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings that involve state agencies.

(1) For projects of statewide, regional or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq. (NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city;

(B) any responsible agency

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice.

(3) A lead agency shall call at least one scoping meeting for a proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible but not later than 30 days after receiving the request from the Department of Transportation.

(d) The Office of Planning and Research. The Office of Planning and Research will ensure that the state responsible and trustee agencies reply to the lead agency within 30 days of receipt of the notice of preparation by the state responsible and trustee agencies.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4 and 21098, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending subsection (a)(2) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Amendment of section heading, section and NOTE filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending section and NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
5. Amendment of subsections (a) and (c)(1), new subsection (c)(2), subsection renumbering and amendment of NOTE filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15083.5. City or County Consultation with Water Agencies. [Repealed]

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (a)(2)(B) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. Repealer filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with the Office of Planning and Research in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15′ or 7–1/2′ topographical map identified by quadrangle name).

(3) An address where copies of the draft EIR are available, and

(4) The review period during which comments will be received on the draft EIR.

(c) A sample form for the notice of completion is included in Appendix L.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the notice of completion cover form required by the State Clearinghouse will serve as the notice of completion (see Appendix C).

(e) Public agencies are encouraged to make copies of notices of completion filed pursuant to this section available in electronic format on the Internet.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a) and new subsection (e) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Amendment of subsections (b)(2) and (b)(4)–(d) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending subsection (a) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non–attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures ad-

dressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect repealing subsection (a)(6) and renumbering subsections filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Office of Planning and Research. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low–level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The public notice shall be given as provided under Section 15105 (a sample form is provided in Appendix L). Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subdivision (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21098, 21104, 21152, 21153 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
3. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
4. Amendment of subsection (a) and NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
5. Change without regulatory effect amending subsections (a), (b) and (c)(6) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
6. Amendment of subsections (a) and (e) and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and sugges-

tions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21092.5, 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

HISTORY

1. New subsection (b), subsection relettering and amendment of NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. The following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and, in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either in the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR.

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(3) As part of providing notice of recirculation as required by Public Resources Code Section 21092.1, the lead agency shall send a notice of recirculation to every agency, person, or organization that commented on the prior EIR. The notice shall indicate, at a minimum, whether new comments may be submitted only on the recirculated portions of the EIR or on the entire EIR in order to be considered by the agency.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. New subsections (f)–(g) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Amendment of subsections (f)–(f)(2) and new subsection (f)(3) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15090. Certification of the Final EIR.

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non–elected decision–making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision–making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's plan-

ning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082.1, 21100 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22)
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council* (1978) 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus* (1981)118 Cal. App. 3d 348; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsections (b)–(d) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21159.26, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. App. 3d 247; San *Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

HISTORY

1. Change without regulatory effect amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision–making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco* (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsections (b) and (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15′ or 7–1/2′ topograph-

ical map identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.

(2) A brief description of the project.

(3) The lead agency's name and the date on which the agency approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i), the responsible agency's name and date of approval shall also be identified.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30–day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but any such form shall include, at a minimum, the information required by subdivision (b). Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the Guidelines and the Public Resources Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council,* (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection relettering, and amendment of newly designated subsection (f) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending subsections (c)–(h) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo v. Yorty,* (1973) 32 Cal. App. 3d 795.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15097. Mitigation Monitoring or Reporting.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan–level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan–level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located and to the California Department of Transportation. Each transportation planning agency and the California Department of Transportation shall adopt guidelines for the submittal of such information.

NOTE: Authority: Section 21083, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Amendment of subsection (g) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15103. Response to Notice of Preparation.

Responsible and Trustee Agencies, and the Office of Planning and Research shall provide a response to a Notice of Preparation to the Lead Agency within 30 days after receipt of the notice. If they fail to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that none of those entitles have a response to make and may ignore a late response.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, the Office of Planning and Research, or by the project applicant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix K and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision–making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision–making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (d) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
4. Amendment of subsection (c), new subsection (e) and amendment of NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lease agency accepted the application as complete.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one–year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

[The next page is 687.]

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one–year time limit for completing and certifying a final EIR or the 105–day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR–EIS or combined negative declaration–finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR–EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Repealer of subsection (b)(1), subsection renumbering, amendment of subsection (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(E), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Change without regulatory effect amending subsection (c)(3) filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100, 21105 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsection (d) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21061, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21061, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision–making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment of subsections (b) and (d)(1)(B), new subsection (d)(1)(C) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and re-

gional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)-(4), amendment of subsection (d)(5), new subsections (d)(5)(A)-(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (e), subsection relettering, and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of first paragraph, repealer and new subsections (a)-(f) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry*

v. City of Murrieta (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. Of Calif* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally–binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission,* 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

NOTE: Authority: Section 21083, Public Resources Code. Reference: Sections 5020.5, 21002, 21003, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California,* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Amendment of subsection (b)(3)(C) and amendment of NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those al-

ternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376;

Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project–by–project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section15183(j).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman* v.

Board of Supervisors, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services* (1995) 38 Cal.App.4th 1574; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
4. Change without regulatory effect repealing subsection (a)(4), amending subsection (b)(1)(B), redesignating former subsection (b)(1)(B)1. as subsection (b)(2), repealing former subsection (b)(1)(B)2., renumbering subsections and amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
5. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable

is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in subdivision (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending subsection (d) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a de-

cision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15152. Tiering.

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site–specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large–scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site–specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple–family residential development/residential and commercial or retail mixed–use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Projects consistent with community plan, general plan, or zoning (Section 15183).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100 and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsections (f)(3)(A)–(B) and repealing subsection (f)(3)(C) filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
3. Change without regulatory effect repealing subsection (h)(7), renumbering subsections and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of subdivision (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

HISTORY

1. Change without regulatory effect amending subsection (b)(2) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport–related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21096, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (b) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15155. City or County Consultation with Water Agencies.

(a) The following definitions are applicable to this section.

(1) A "water–demand project" means:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(D) A hotel or motel, or both, having more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) A mixed–use project that includes one or more of the projects specified in subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(G) of this section.

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

1. A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

2. A mixed–use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(3) "Water acquisition plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county lead agency pursuant to subdivision (a) of section 10911 of the Water Code.

(4) "Water assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or the city or county lead agency, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

(5) "City or county lead agency" means a city or county, acting as lead agency, for purposes of certifying or approving an environmental impact report, a negative declaration, or a mitigated negative declaration for a water–demand project.

(b) Subject to section 15155, subdivision (d) below, at the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration, or any supplement thereto, is required for the water–demand project, the city or county lead agency shall take the following steps:

(1) The city or county lead agency shall identify any water system that either: (A) is a public water system that may supply water to the water–demand project, or (B) that may become such a public water system as a result of supplying water to the water–demand project. The city or county lead agency shall request the governing body of each such public water system to determine whether the projected water demand associated with a water–demand project was included in the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of the Water Code, and to prepare a water assessment approved at a regular or special meeting of that governing body.

(2) If the city or county lead agency is not able to identify any public water system that may supply water for the water–demand project, the city or county lead agency shall prepare a water assessment after consulting with any entity serving domestic water supplies whose service area includes the site of the water–demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water–demand project. The governing body of the city

or county lead agency must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by the governing body of a public water system preparing the water assessment, provided that the request for an extension of time is made within 90 days after the date on which the governing body of the public water system received the request to prepare a water assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30–day extension, the city or county lead agency may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of Part 2.10 of Division 6 (commencing with section 10910) of the Water Code relating to the submission of the water assessment.

(d) If a water–demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water–demand projects that were included in such larger water–demand project if all of the following criteria are met:

(1) The entity completing the water assessment had concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water–demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water–demand project:

(A) Changes in the larger water–demand project that result in a substantial increase in water demand for the water–demand project.

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system or the water supplying city or county identified in the water assessment to provide a sufficient supply of water for the water demand project.

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached the conclusion in subdivision (d)(1).

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the water–demand project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. The city or county lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county lead agency determines that water supplies will not be sufficient, the city or county lead agency shall include that determination in its findings for the water–demand project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code; and Sections 10910–10915, Water Code.

HISTORY

1. New section filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. New Article 11 (Section 15180) filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160–15170) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsections (b)–(c) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision–making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21166, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision–making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467.

HISTORY

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subection (b) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15167. Staged EIR.

(a)Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren–Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case–by–case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795 (1973).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15170. Joint EIR–EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 11.5. Master Environmental Impact Report

§ 15175. Master EIR.

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21156, 21157 and 21089, Public Resources Code.

HISTORY

1. New article 11.5 (sections 15175–15175.5) and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15176. Contents of a Master EIR.

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office–commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

(c) A description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel–specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (b)(3) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15177. Subsequent Projects Within the Scope of the MEIR.

(a) After a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subdivision (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project–specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional signifi-

cant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21157, 21157.6 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (b) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15178. Subsequent Projects Identified in the MEIR.

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project–specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(1) The Master EIR was certified more than five years prior to the filing of an application for a subsequent project except as set forth in subsection (b) below, or

(2) After the certification of the Master EIR, a project not described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR.

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(1) Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(2) Prepares an initial study and, pursuant to the findings of the initial study, does either (A) or (B) below:

(A) certifies subsequent or supplemental EIR that updates or revises the Master EIR and which either:

1. is incorporated into the previously certified Master EIR,

2. references any deletions, additions or other modifications to the previously certified Master EIR;

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. Amendment filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15179.5. Focused EIRs and Small Projects.

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed–use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one–half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated through the preparation of a subsequent environmental impact report or a supplemental environmental impact report.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21158.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 12. Special Situations

§ 15180. Redevelopment Projects.

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, all public and private activities or undertakings pursuant to or in furtherance of the redevelopment plan shall constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

If a project EIR has been certified for the redevelopment plan, no subsequent EIRs are required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21090 and 21166, Public Resources Code.

HISTORY

1. New Article 12 (Sections 15190–15192) filed 1–6–76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4–2–76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7–13–83; effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
5. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
6. Amendment of section and NOTE filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

HISTORY

1. Change without regulatory effect repealing section filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(e) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 65453, Government Code.

HISTORY

1. Change without regulatory effect repealing subsection (d), relettering subsections and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project–specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15186. School Facilities.

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials,wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will consult with other agencies in this regard.

(b) Before certifying an EIR or adopting a negative declaration for a project located within one–fourth mile of a school involves the construction or alteration of a facility that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety Code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; and

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be adopted or certified unless:

(1) The negative declaration, mitigated negative declaration, or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This does not include a natural gas pipeline used only to supply the school or neighborhood.

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one–fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school district makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short–term nor long–term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.

(e) The following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. §66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(7) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(8) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(9) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(10) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

NOTE: Authority cited: Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

HISTORY
1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).
3. Amendment filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15187. Environmental Review of New Rules and Regulations.

(a) At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159 and 21159.4, Public Resources Code.

HISTORY
1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15188. Focused EIR for Pollution Control Equipment.

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

(1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

(2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

(3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project–specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth–inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.1, Public Resources Code.

HISTORY
1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15189. Compliance with Performance Standard or Treatment Requirement Rule or Regulation.

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project–specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.2, Public Resources Code.

HISTORY
1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15190. Deadlines for Compliance with Sections 15188 and 15189.

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.3, Public Resources Code.

HISTORY
1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15190.5. Department of Defense Notification Requirement.

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance; or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670–21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code.

HISTORY

1. New section filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

§ 15191. Definitions.

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(*l*) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23 and 21159.24, Public Resources Code.

HISTORY

1. New article 12.5 (sections 15191–15196) and section filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community–level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in–lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(*l*) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.21 and 21159.27, Public Resources Code.

HISTORY

1. New section filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census–defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census–defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low–, or moderate–income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low– and moderate–income households for a period of at least 15 years.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

HISTORY

1. New section filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census–defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site–specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low–income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

HISTORY

1. New section filed 7–27–2007; operative 7–27–2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community–level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one–half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in–lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project–specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community–level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

HISTORY

1. New section filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

§ 15196. Notice of Exemption for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

HISTORY

1. New section filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

Article 13. Review and Evaluation of EIRs and Negative Declarations

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. New Article 13 (Sections 15201-15203) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201-15203) and new Article 13 (Sections 15200-15209) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
4. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section.

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The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

HISTORY

1. Amendment of subsection (e) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specfic effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080, 21081.6, 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812–3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) A sufficient number of copies of an EIR, negative declaration, or mitigated negative declaration, shall be submitted to the State Clearinghouse for review and comment by state agencies. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration or mitigated negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on–line process for submittal of the notice of completion form to the State Clearinghouse, the form gener-

ated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083, 21091, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsection (a) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Amendment of subsection (e) and amendment of NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on–line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subdivision include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento–San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference. Section 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (b)(5) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. New subsection (a)(1) designator and new subsection (a)(2) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (b)(4)(B) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
4. Amendment of subsection (a)(1) and amendment of NOTE filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
5. Change without regulatory effect amending subsection (b)(2) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has

special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

§ 15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

HISTORY

1. New Article 14 (Sections 15220–15228) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR–EIS or negative declaration–finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15223. Consultation with Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15225. Circulation of Documents.

(a) Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21092, Public Resources Code.

HISTORY

1. New subsection (a) designator, new subsections (b)–(b)(2), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings,

(d) Joint environmental documents.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21101, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15229. Baseline Analysis for Military Base Reuse Plan EIRs.

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate–income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no–project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter–Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083.8.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 15. Litigation

§ 15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY

1. New Article 15 (Sections 15230–15233) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15231. Adequacy of EIR or Negative Declaration for Use by Lead and Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

HISTORY

1. Amendment of section heading filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for noncompliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 16. EIR Monitor

§ 15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

SECRETARY FOR RESOURCES
ATTENTION: CALIFORNIA EIR MONITOR
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21088, Public Resources Code.

HISTORY

1. New Article 16 (Section 15240) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 17. Exemption for Certified State Regulatory Programs

§ 15250. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New Article 17 (Sections 15250–15253) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg–Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer–Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code; and the planning program of the San Francisco Bay Conservation and Development Commission under the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren–Alquist Act, commencing with Public Resources Code Section 25500.

(k) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(*l*) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(m) The program of the Delta Protection Commission involving the preparation and adoption of a Resource Management Plan for the Sacramento–San Joaquin Delta (Pub. Resources Code § 29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code § 29763.5).

(n) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(o) The program of the Department of Fish and Game implementing the incidental take permit application process under the California Endangered Species Act ("CESA"), Fish and Game Code sections 2080 and 2081, and specifically the regulation governing the Department of Fish and Game's role as a "lead agency" when issuing incidental take permits, found at California Code of Regulations, Title 14, section 783.5(d).

(p) The regulatory program of the Department of Fish and Game for review and approval of voluntary local programs for routine and ongoing agricultural activities, as authorized by the California Endangered Species Act, Fish and Game Code section 2086.

NOTE: Authority cited: Sections 21083 and 21080.5, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New subsection (m) filed 3–1–89; operative 3–31–89 (Register 89, No. 10).
2. New subsection (n) filed 11–9–94; operative 12–9–94 (Register 94, No. 45).
3. New subsection (o) filed 8–27–98; operative 8–27–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
4. New subsection (p) and amendment of NOTE filed 3–29–99; operative 3–29–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 14).
5. Change without regulatory effect amending subsection (i) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
6. New subsection (q) filed 3–4–2003; operative 3–4–2003 pursuant to Public Resources Code section 21083 (Register 2003, No. 10).
7. Amendment of subsection (h), repealer of subsection (j) and subsection relettering filed 7–11–2006; operative 7–11–2006 pursuant to Public Resources Code section 21083 (Register 2006, No. 28).

§ 15252. Substitute Document.

(a) The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(b) The notice of the decision on the proposed activity shall be filed with the Secretary for Resources.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. Redesignation of first paragraph and subsections (a)–(b)(2) as subsections (a)–(a)(2)(B) and new subsection (b) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in subdivision (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in subdivision (b). Where a certified agency does not meet the criteria in subdivision (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

HISTORY

1. Change without regulatory effect amending subsections (a) and (c) and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 18. Statutory Exemptions

§ 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY

1. New Article 18 (Sections 15260–15277) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on–going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 13389, Water Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 51119, Government Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long–range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long–range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal programs and long–range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case–by–case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long–term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short–term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section180.2 of the Streets and Highways Code, Section 180 et seq.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15270. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation f the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is re-

quested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3)Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra–city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15274. Family Day Care Homes.

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in–home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in–home care for up to eight children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending section filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high–occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15276. Transportation Improvement and Congestion Management Programs.

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(13), Public Resources Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15278. Application of Coatings.

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10–day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Chapter 1131, Statutes of 1993, Section 1.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15279. Housing for Agricultural Employees.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect repealing section filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15280. Lower–Income Housing Projects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.14, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (a) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Change without regulatory effect repealing section filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15281. Air Quality Permits.

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.24, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subdivision summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right–of–way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(f) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(g) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(h) The adoption of an ordinance regarding second units in a single–family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(i) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(j) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(k) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(*l*) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code § 29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(m) Minor alterations to utilities made for the purposes of complying with Sections 116410 and 116415 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(n) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(o) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(p) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(q) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(r) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(s) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(t) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(u) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(v) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08,

21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735 and 44203(g), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph, repealing subsection (e), relettering subsections and amending newly designated subsection (m) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15283. Housing Needs Allocation.

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 65584, Government Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15284. Pipelines.

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

(1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one–half mile at a time.

(2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.

(4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.

(5) Project activities take place within an existing right–of–way and that right–of–way will be restored to its pre–project condition upon completion of the project.

(6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(c) When the lead agency determines that a project meets all of the criteria of subdivisions (a) and (b), the party undertaking the project shall do all of the following:

(1) Notify in writing all responsible and trustee agencies, as well as any public agency with environmental, public health protection, or emergency response authority, of the lead agency's invocation of this exemption.

(2) Mail notice of the project to the last known name and address of all organizations and individuals who have previously requested such notice and notify the public in the affected area by at least one of the following procedures:

(A) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on and off site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The notice shall include a brief description of the proposed project and its location, and the date, time, and place of any public meetings or hearings on the proposed project. This notice may be combined with the public notice required under other law, as applicable, but shall meet the preceding minimum requirements.

(3) In the case of private rights–of–way over private property, receive from the underlying property owner permission for access to the property.

(4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.23, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15285. Transit Agency Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken on or after July 1,1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short–term investments, and unrestricted short–term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensa-

tion reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080 and 21080.32, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 19. Categorical Exemptions

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for resources that such an activity is discretionary.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464.

HISTORY

1. Amendment of subsection (b), new subsections (d)–(f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15300.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15300.4. Application by Public Agencies.

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15300.2.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all–inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly–owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(*l*) Demolition and removal of individual small structures listed in this subdivision;

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of subsections (c), (k), (*l*)(1)–(3) and (o), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (h) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
4. Change without regulatory effect amending subsection (k)(1) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15302. Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15303. New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

(b) A duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.

(c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New subsection (f) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Amendment filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15304. Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist–Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

(b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

(h) The creation of bicycle lanes on existing rights–of–way.

(i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (b) and new subsection (i) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15305. Minor Alterations in Land Use Limitations.

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15306. Information Collection.

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15307. Actions by Regulatory Agencies for Protection of Natural Resources.

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15308. Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code; *International Longshoremen's and Warehousemen's Union* v. *Board of Supervisors*, (1981) 116 Cal. App. 3d 265.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15309. Inspections.

Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15310. Loans.

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15311. Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On–premise signs;

(b) Small parking lots;

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in gener-

ally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15312. Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines; or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15313. Acquisition of Lands for Wildlife Conservation Purposes.

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including (a) preservation of fish and wildlife habitat, (b) establishing ecological reserves under Fish and Game Code Section 1580, and (c) preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15314. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15315. Minor Land Divisions.

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15316. Transfer of Ownership of Land in Order to Create Parks.

Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084, 21083.2, and 21084.1, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15317. Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15318. Designation of Wilderness Areas.

Class 18 consists of the designation wilderness areas under the California Wilderness System.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15319. Annexations of Existing Facilities and Lots for Exempt Facilities.

Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre–zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15320. Changes in Organization of Local Agencies.

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15321. Enforcement Actions by Regulatory Agencies.

Class 21 consists of::

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement.

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction.

(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15322. Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15323. Normal Operations of Facilities for Public Gatherings.

Class 23 consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but are not limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools, and amusement parks.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15324. Regulations of Working Conditions.

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

(a) Employee wages,

(b) Hours of work, or

(c) Working conditions where there will be no demonstrable physical changes outside the place of work.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15325. Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources.

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats.

(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.

(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

(e) Acquisition, sale, or other transfer to preserve historical resources.

(f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. New subsection (f) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15326. Acquisition of Housing for Housing Assistance Programs.

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15327. Leasing New Facilities.

(a) Class 27 consists of the leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:

(1) Shall be in conformance with existing state plans and policies and with general, community, and specific plans for which an EIR or negative declaration has been prepared,

(2) Shall be substantially the same as that originally proposed at the time the building permit was issued,

(3) Shall not result in a traffic increase of greater than 10% of front access road capacity, and

(4) Shall include the provision of adequate employee and visitor parking facilities.

(b) Examples of Class 27 include, but are not limited to:

(1) Leasing of administrative offices in newly constructed office space.

(2) Leasing of client service offices in newly constructed retail space.

(3) Leasing of administrative and/or client service offices in newly constructed industrial parks.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15328. Small Hydroelectric Projects at Existing Facilities.

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

(a) The capacity of the generating facilities is 5 megawatts or less,

(b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:

(1) Rate and volume of flow,

(2) Temperature,

(3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life, and

(4) Timing of release.

(c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river.

(d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment.

(e) There will be no significant upstream or downstream passage of fish affected by the project.

(f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure.

(g) The project will not cause violations of applicable state or federal water quality standards.

(h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places, and

(i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of subsection (i) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15329. Cogeneration Projects at Existing Facilities.

Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in this section.

(a) At existing industrial facilities, the installation of cogeneration facilities will be exempt where it will:

(1) Result in no net increases in air emissions from the industrial facility, or will produce emissions lower than the amount that would require review under the new source review rules applicable in the county, and

(2) Comply with all applicable state, federal, and local air quality laws.

(b) At commercial and industrial facilities, the installation of cogeneration facilities will be exempt if the installation will:

(1) Meet all the criteria described in subdivision (a),

(2) Result in no noticeable increase in noise to nearby residential structures,

(3) Be contiguous to other commercial or institutional structures.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending subsection (b)(1) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15330. Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances.

Class 30 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less.

(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses,or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code Section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off–site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site.

(b) Examples of such minor cleanup actions include but are not limited to:

(1) Removal of sealed, non–leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;

(2) Maintenance or stabilization of berms, dikes, or surface impoundments;

(3) Construction or maintenance of interim or temporary surface caps;

(4) Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;

(5) Excavation and/or offsite disposal of contaminated soils or sludges in regulated units;

(6) Application of dust suppressants or dust binders to surface soils;

(7) Controls for surface water run–on and run–off that meets seismic safety standards;

(8) Pumping of leaking ponds into an enclosed container;

(9) Construction of interim or emergency ground water treatment systems;

(10) Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending first paragraph filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
3. Redesignation of portions of first paragraph as subsections (a)–(b), amendment of newly designated subsection (a) and redesignation of former subsections (a)–(j) as subsections (b)(1)–(10) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15331. Historical Resource Restoration/Rehabilitation.

Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15332. In-Fill Development Projects.

Class 32 consists of projects characterized as in–fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value, as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 12–23–98; operative 12–23–98 pursuant to Public Resources Code section 21087 (Register 98, No. 52).

§ 15333. Small Habitat Restoration Projects.

Class 33 consists of projects not to exceed five acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that:

(a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065,

(b) There are no hazardous materials at or around the project site that may be disturbed or removed, and

(c) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) Examples of small restoration projects may include, but are not limited to:

(1) revegetation of disturbed areas with native plant species;

(2) wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat;

(3) stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish;

(4) projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment.

(5) stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and

(6) culvert replacement conducted in accordance with published guidelines of the Department of Fish and Game or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Article 20. Definitions

§ 15350. General.

The definitions contained in this article apply to terms used throughout the guidelines unless a term is otherwise defined in a particular section.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. New Article 20 (Sections 15350–15387) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15351. Applicant.

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15352. Approval.

(a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061 and 21065, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15353. CEQA.

"CEQA" means the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21050, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15354. Categorical Exemption.

"Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b)(10) and 21084, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15355. Cumulative Impacts.

"Cumulative impacts" refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083(b), Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15356. Decision–Making Body.

"Decision–making body" means any person or group of people within a public agency permitted by law to approve or disapprove the project at issue.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003(b), Public Resources Code; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15357. Discretionary Project

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to ap-

prove or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg–Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(a), Public Resources Code; *Johnson* v. *State of California* (1968) 69 Cal. 2d 782; *People* v. *Department of Housing and Community Development* (1975) 45 Cal. App. 3d 185; *Day* v. *City of Glendale* (1975) 51 Cal. App. 3d 817; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15358. Effects.

"Effects" and "impacts" as used in these guidelines are synonymous.

(a) Effects include:

(1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth–inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21068 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15359. Emergency.

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(2), (3) and (4), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15360. Environment.

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man–made conditions.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21060.5, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15361. Environmental Documents.

"Environmental documents" means initial studies, negative declarations, draft and final EIRs, documents prepared as substitutes for EIRs and negative declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an initial study, negative declaration, or an EIR.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061, 21080(b), 21080.5, 21108 and 21152, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15362. EIR—Environmental Impact Report.

"EIR" or "environmental impact report" means a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents of an EIR are discussed in Article 9, commencing with Section 15120 of these guidelines. The term "EIR" may mean either a draft or a final EIR depending on the context.

(a) Draft EIR means an EIR containing the information specified in Sections 15122 through 15131.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15132.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15363. EIS—Environmental Impact Statement.

"EIS" or "Environmental Impact Statement" means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). NEPA uses the term EIS in the place of the term EIR which is used in CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; 43 U.S.C.A. 4322(2)(c).

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15364. Feasible.

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5 and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15365. Initial Study.

"Initial study" means a preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the initial study is discussed in Article 5, commencing with Section 15060.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.1, 21080.2, 21080.3 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15366. Jurisdiction by Law.

(a) "Jurisdiction by law" means the authority of any public agency:

(1) To grant a permit or other entitlement for use,

(2) To provide funding for the project in question, or

(3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

(1) The site of the project;

(2) The area in which the major environmental effects will occur; and/or

(3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15381, or the lead agency, see Section 15367.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104 and 21153, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15367. Lead Agency.

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 15051.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15368. Local Agency.

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21062 and 21151, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15369. Ministerial.

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15369.5. Mitigated Negative Declaration.

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21064.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15370. Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21100(c), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15371. Negative Declaration.

"Negative declaration" means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15372. Notice of Completion.

"Notice of completion" means a brief notice filed with the Office of Planning and Research by a lead agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15373. Notice of Determination.

"Notice of determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108(a) and 21152, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15374. Notice of Exemption.

"Notice of exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108(b) and 21152(b), Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15375. Notice of Preparation.

"Notice of preparation" means a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, the Office of Planning and Research, and involved federal agencies that the lead agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15376. Person.

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies and political subdivisions of such entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21066, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending section and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15377. Private Project.

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or

(b) A lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15378. Project.

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (*Stein* v. *City of Santa Monica*, (1980) 110 Cal. App. 3d 458; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165);

(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivisions (a)(2) or (a)(3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; *Kaufman and Broad–South Bay, Inc. v. Morgan Hill Unified School District*, (1992) 9 Cal.App.4th 464; and *Fullerton Joint Union High School District v. State Board of Education*, (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsections (b)(1)–(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect repealing subsection (b)(5) and amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
5. Amendment of subsection (b)(3) and new subsection (b)(5) filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
6. Change without regulatory effect amending subsection (d) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15379. Public Agency.

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21063, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15380. Endangered, Rare or Threatened Species.

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Code of Regulations; or

(2) Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21001(c), Public Resources Code.

HISTORY

1. Amendment of section heading, subsections (c), (c)(1) and (d), and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (d) and NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15381. Responsible Agency.

"Responsible agency" means a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2 and 21167.3, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15382. Significant Effect on the Environment.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21068, 21083, 21100 and 21151, Public Resources Code; *Hecton* v. *People of the State of California*, 58 Cal. App. 3d 653.

HISTORY

1. On November 23, 1986 the regulation (Title 14, § 895.1) became effective which clarifies the Board's regulatory interpretation of "effect" and "impact" as specified in CEQA (Public Resources Code § 21068 and § 21080.5(d)(2) and (3)) (Register 86, No. 4).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15383. State Agency.

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15384. Substantial Evidence.

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080, 21082.2, 21168 and 21168.5, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Running Fence Corp.* v. *Superior Court* (1975) 51 Cal. App. 3d 400; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15385. Tiering.

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site–specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site–specific EIR.

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

§ 15386. Trustee Agency.

"Trustee agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include: (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3 and 21080.4, Public Resources Code.

HISTORY

1. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

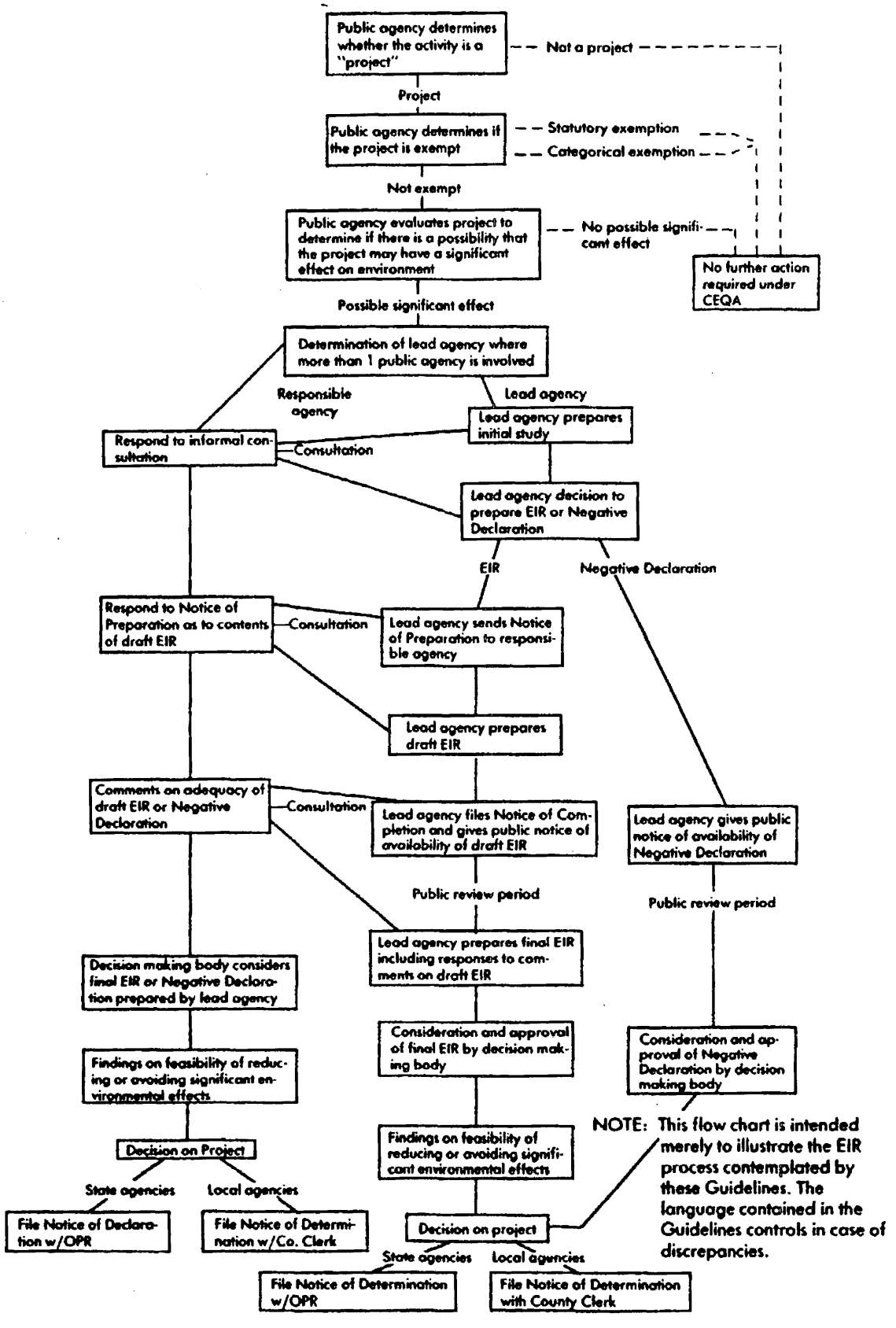
§ 15387. Urbanized Area.

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A lead agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301–3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.7, 21083 and 21084, Public Resources Code.

Appendix A

CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Amendment of Appendix A filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5). For prior history, see Registers 80, No. 19 and 73, No. 50.

APPENDIX B

AREAS OF SPECIAL EXPERTISE OF STATE DEPARTMENTS IN SUBJECTS OF ENVIRONMENTAL CONCERN

		FOOD AND AGRICULTURE		AERONAUTICS		CHP		CORPORATIONS		DMV		HCD		CALTRANS		REAL ESTATE		SAVINGS AND LOAN				HEALTH SERVICES		RESOURCES AGENCY		AIR RESOURCES BOARD		BCDC	
1	Air quality and air pollution control	1		x		16				x												x				x			
2	Chemical contamination and food products	x																				x							
3	Coastal areas, wetlands, estuaries, waterfowl refuges and beaches																					7						26	
4	Congestion in urban areas, housing and building displacement											x				x						8				24			
5	Disease control	x																				x							
6	Electric energy generation and supply																					x				x			
7	Environmental effects with special impact in low-income neighborhoods											x		x		x						9							
8	Flood plains and watersheds	x														x													
9	Food additives and food sanitation	x																				x							
10	Herbicides	x																				x		x					
11	Historic and archaeological sites													x															
12	Human ecology	2																				x				x			
13	Microbiological contamination	x																				x							
14	Mineral land reclamation																												
15	Natural gas energy development generation and supply																												
16	Navigable airways			x																		10				16			
17	Navigable waterways																											25	
18	Noise control and abatement			x		x																x							
19	Parks, forests, trees and outdoor recreation areas	x																										25	
20	Pesticides	x																				x		x					
21	Radiation and radiological health																					x		x					
22	Regional comprehensive planning			x										x		x		x				11				24			
23	Rodent control	x																				x							
24	Sanitation and waste systems	3																				x							
25	Shellfish sanitation																					x							
26	Soil and plant life, sedimentation, erosion, and hydrologic conditions	x																											
27	Toxic materials	x												x								x							
28	Transportation and handling of hazardous materials	4				x				x												x							
29	Water quality and water pollution control	x																				x							
30	Fish and wildlife	5																				12							
31	Activities with special impact on regional jurisdictions																					13						25	
32	Water project formulation																									24			
33	Geothermal energy																									24			
34	Oil and petroleum development, generation and supply																												
35	Statewide land use patterns																												
36	Open Space policy																									24			
37	Statewide overview—cumulative impact of separate projects													x															
38	Seismic Hazards											x																	

	BOATING & WATERWAYS	COASTAL COMMISSION	CTRPA	COLORADO RIVER BOARD	CONSERVATION	ENERGY COMMISSION	FISH AND GAME	FORESTRY	PARKS AND RECREATION	SOLID WASTE MANAGEMENT BOARD	STATE LANDS DIVISION	STATE RECLAMATION BOARD	STATE WATER RESOURCES CONTROL BOARD	WATER RESOURCES	NATIVE AMERICAN HERITAGE COMMISSION	OFFICE OF PLANNING AND RESEARCH	
1 Air quality and air pollution control			27		x								x				
2 Chemical contamination and food products				14			x						x				
3 Coastal areas, wetlands, estuaries, waterfowl refuges and beaches	x	26	27	14	x		x		x		x		x	x			
4 Congestion in urban areas, housing and building displacement		26	27										21				
5 Disease control		26		14			x	22					x				
6 Electric energy generation and supply	x	26		14		x	x	23	x					x			
7 Environmental effects with special impact in low-income neighborhoods		26		14			x		19			20					
8 Flood plains and watersheds		26	27	14	x		x		x		x			x			
9 Food additives and food sanitation																	
10 Herbicides				14			x	22	x				x				
11 Historic and archaeological sites		26	27						x		x				x		
12 Human ecology		26	27				x		x							x	
13 Microbiological contamination				14			x						x				
14 Mineral land reclamation		26	27		x		x		x		x						
15 Natural gas energy development generation and supply		26			x	x	15				x						
16 Navigable airways							16										
17 Navigable waterways	x	26	27	14			x				x	20					
18 Noise control and abatement							17										
19 Parks, forests, trees and outdoor recreation areas	x	26	27	14	x		x		x		x				x		
20 Pesticides							x	22	x				x	x			
21 Radiation and radiological health				14		x	x							x			
22 Regional comprehensive planning	x	26	27	14	x	x	x		x		x			x		x	
23 Rodent control							x	22	x								
24 Sanitation and waste systems		26		14	x		18			x			x	x			
25 Shellfish sanitation							x						x	x			
26 Soil and plant life, sedimentation, erosion, and hydrologic conditions		26	27	14	x		x		x		x		x	x			
27 Toxic materials				14			x		x	x			x	x			
28 Transportation and handling of hazardous materials					x	x							x	x			
29 Water quality and water pollution control	x	26	27	14	x		x					20	x	x			
30 Fish and wildlife		26	27	14			x		x				21				
31 Activities with special impact on regional jurisdictions		26	27	14					x			20		x			
32 Water project formulation	x			14			x	23	x			20	x	x			
33 Geothermal energy				14		x	x				x		21	x			
34 Oil and petroleum development, generation and supply		26				x	x				x		21				
35 Statewide land use patterns		26	27			x	x				x					x	
36 Open Space policy		26	27				x				x				x	x	
37 Statewide overview—cumulative impact of separate projects						x										x	
38 Seismic Hazards		26	27		x	x								x			

Appendix B

Footnotes

No.

1. *Food and Agriculture*—Effects on plants and animals.
2. *Food and Agriculture*—Protection of food and fiber.
3. *Food and Agriculture*—Agricultural, dairy and feed lot systems.
4. *Food and Agriculture*—As pertains to transportation, handling, storage and decontamination of pesticides.
5. *Food and Agriculture*—Pesticide effects, predatory animal control, bird control.
6. *California Highway Patrol*—Enforcement of motor vehicle regulations.
7. *Health Services*—Beach sanitation, water pollution, solid waste and mosquito control.
8. *Health Services*—Pertains to health component.
9. *Health Services*—Most of these are strongly related to health.
10. *Health Services*—Pertains to noise.
11. *Health Services*—Pertains to personal and environmental health components.
12. *Health Services*—As it may pertain to human health hazards.
13. *Health Services*—Pertains to comprehensive health planning.
14. *Colorado River Board*—As pertains to the Colorado, New and Alamo Rivers.
15. *Fish and Game*—As field development and distribution systems may affect fish and wildlife.
16. *Fish and Game*—As may affect migrating and resident wildlife.
17. *Fish and Game*—As excessive noise may affect wildlife.
18. *Fish and Game*—As water quality may affect fish and wildlife.
19. *Parks and Recreation*—In impacted areas only.
20. *Reclamation Board*—In areas of Board's jurisdiction only—the Sacramento–San Joaquin Valley.
21. *State Water Resources Control Board*—As may pertain to water quality.
22. *Forestry*—With respect to forest land.
23. *Forestry*—(6) and (32)—As related to fire protection or State (fire protection) responsibility land.
24. *Air Resources Board*—(4), (22), (32), (33), and (36)—As may pertain to residential, commercial, industrial or transportation growth.
25. *San Francisco Bay Conservation and Development Commission*—(3), (17), (19), and (30)—With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. *California Coastal Commission*—(3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36)—With respect to effects within the California Coastal Zone.
27. *California Tahoe Regional Planning Agency*—With respect to effects in the Tahoe Basin.
28. *Native American Heritage Commission*—With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

HISTORY

1. Amendment of Appendix B filed 12–15–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1–1–77.
3. Amendment of Appendix B and Footnotes filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix C

Notice of Completion & Environmental Document Transmittal

For U.S. Mail: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812–3044
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH#

Project Title: _____
Lead Agency: _____ Contact Person: _____
Mailing Address: _____ Phone: _____
City: _____ Zip: _____ County: _____

Project Location:
County: _____ City/Nearest Community: _____ Total Acres: _____
Cross Streets: _____ Zip Code: _____
Assessor's Parcel No. _____ Section: _____ Twp. _____ Range: _____ Base: _____
Within 2 miles: State Hwy#: _____ Waterways: _____
Airports: _____ Railways: _____ Schools: _____

Document Type:

CEQA:
- ☐ NOP
- ☐ Early Cons
- ☐ Neg Dec
- ☐ Mit Neg Dec
- ☐ Draft EIR
- ☐ Supplement to EIR
- ☐ Subsequent EIR
- ☐ Other _____

NEPA:
- ☐ NOI
- ☐ EA
- ☐ Draft EIS
- ☐ FONSI

Other:
- ☐ Joint Document
- ☐ Final Document
- ☐ Other: _____

Local Action Type:
- ☐ General Plan Update
- ☐ General Plan Amendment
- ☐ General Plan Element
- ☐ Community Plan
- ☐ Specific Plan
- ☐ Master Plan
- ☐ Planned Unit Development
- ☐ Site Plan
- ☐ Rezone
- ☐ Prezone
- ☐ Use Permit
- ☐ Land Division (Subdivision, etc.)
- ☐ Annexation
- ☐ Redevelopment
- ☐ Coastal Permit
- ☐ Other: _____

Development Type:
- ☐ Residential: *Units* _____ *Acres* _____
- ☐ Office: *Sq. ft.* _____ *Acres* _____ *Employees* _____
- ☐ Commercial: *Sq.ft.* _____ *Acres* _____ *Employees* _____
- ☐ Industrial: *Sq.ft.* _____ *Acres* _____ *Employees* _____
- ☐ Educational _____
- ☐ Recreational _____
- ☐ Water Facilities: *Type* _____ *MGD* _____
- ☐ Transportation: *Type* _____
- ☐ Mining: *Mineral* _____
- ☐ Power: *Type* _____ *MW* _____
- ☐ Waste Treatment: *Type* _____ *MGD* _____
- ☐ Hazardous Waste: *Type* _____
- ☐ Other: _____

Project Issues That May Have A Significant Or Potentially Significant Impact:
- ☐ Aesthetic/Visual
- ☐ Agricultural Land
- ☐ Air Quality
- ☐ Archeological/Historical
- ☐ Biological Resources
- ☐ Coastal Zone
- ☐ Drainage/Absorption
- ☐ Economic/Jobs
- ☐ Fiscal
- ☐ Flood Plain/Flooding
- ☐ Forest Land/Fire Hazard
- ☐ Geologic/Seismic
- ☐ Minerals
- ☐ Noise
- ☐ Population/Housing Balance
- ☐ Public Services/Facilities
- ☐ Recreation/Parks
- ☐ Schools/Universities
- ☐ Septic Systems
- ☐ Sewer Capacity
- ☐ Soil Erosion/Compaction/Grading
- ☐ Solid Waste
- ☐ Toxic/Hazardous
- ☐ Traffic/Circulation
- ☐ Vegetation
- ☐ Water Quality
- ☐ Water Supply/Groundwater
- ☐ Wetland/Riparian
- ☐ Growth Inducement
- ☐ Land Use
- ☐ Cumulative Effects
- ☐ Other _____

Appendix C

Notice of Completion & Environmental Document Transmittal *(continued)*

Present Land Use/Zoning/General Plan Designation:

Project Description: *(please use a separate page if necessary)*

NOTE: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice or Preparation or previous draft document) please fill in.

Reviewing Agenices Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below.

___ Air Resources Board
___ Boating & Waterways, Department of
___ California Highway Patrol
___ Caltrans District #_____
___ Caltrans Division of Aeronautics
___ Caltrans Planning
___ Coachella Valley Mountains Conservancy
___ Coastal Commission
___ Colorado River Board
___ Conservation, Department of
___ Corrections, Department of
___ Delta Protection Commission
___ Education, Department of
___ Office of Public School Construction
___ Energy Commission
___ Fish & Game Region #_____
___ Food & Agriculture, Department of
___ Forestry & Fire Protection
___ General Services, Department of
___ Health Services, Department of
___ Housing & Community Development
___ Integrated Waste Management Board
___ Native American Heritage Commission
___ Office of Emergency Services
___ Office of Historic Preservation
___ Parks & Recreation
___ Pesticide Regulation, Department of
___ Public Utilities Commission
___ Reclamation Board
___ Regional WQCB#_____
___ Resources Agency
___ S.F. Bay Conservation & Development Commission
___ San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy
___ San Joaquin River Conservancy
___ Santa Monica Mountains Conservancy
___ State Lands Commission
___ SWRCB: Clean Water Grants
___ SWRCB: Water Quality
___ SWRCB: Water Rights
___ Tahoe Regional Planning Agency
___ Toxic Substances Control, Department of
___ Water Resources, Department of
___ Other:_____
___ Other:_____

Local Public Review Period (to be filled in by lead agency)

Starting Date_____ Ending Date_____

Lead Agency (Complete if applicable):

Consulting Firm:_____
Address:_____
City/State/Zip:_____
Contact:_____
Phone: (___)_____

Applicant:_____
Address:_____
City/State/Zip:_____
Phone: (___)_____

Signature of Lead Agency Representative_____ Date:_____

Revised 2005

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of Appendix C filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 5).
2. Amendment of Appendix C filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
3. Repealer and new appendix filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
4. Change without regulatory effect repealing and adopting new Appendix C and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Appendix D

Notice of Determination

TO:
☐ Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812–3044

Street Address:
1400 Tenth Street
Sacramento, CA 95814

☐ County Clerk
County of: _____

Address: _____

FROM:
Public Agency: _____
Address: _____

Contact: _____
Phone: _____
Lead Agency (if different from above):

Address: _____

Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.
State Clearinghouse Number (if submitted to State Clearinghouse): _____

Project Title: _____

Project Location (include county): _____

Project Description: _____

This is to advise that the _____ has approved the above described
(☐ Lead Agency or ☐ Responsible Agency)
project on _____ and has made the following determinations regarding the above described project:
(Date)

1. The project [☐ will ☐ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☐ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☐ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☐ was not] adopted for this project.
6. Findings [☐ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the Negative Declaration, is available to the General Public at:

Signature (Public Agency) Title: _____
Date: _____ Date Received for filing at OPR: _____

Revised 2005

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY

1. New Appendix D filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
3. Amendment filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
5. Amendment of Appendix D filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
6. Amendment filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
7. Change without regulatory effect repealing and adopting new Appendix D and amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Appendix E

Notice of Exemption

TO: ☐ Office of Planning and Research FROM:
1400 Tenth Street
Sacramento, California 95814
☐ County Clerk
County of _____
_____
_____

_____
Project Title

_____
Project Location—Specific

_____
Project Location—City Project Location—County

_____
Description of Nature, Purpose, and Beneficiaries of Project

_____
Name of Public Agency Approving Project

_____
Name of Person or Agency Carrying Out Project

_____
Exempt Status: (Check One)
____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

[The next page is 714.15.]

Reasons why project is exempt:

Contact Person Area Code Telephone Extension

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a notice of exemption been filed by the public agency approving the project?

Yes__ No__

Date Received for Filing

Signature

Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code.

HISTORY

1. New Appendix = filed 3–26–74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6–26–74 (Register 74, No. 26).
3. Amendment filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
4. Amendment of Appendix = filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
5. Change without regulatory effect amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

Appendix F

Energy Conservation

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,

(2) decreasing reliance on natural gas and oil, and

(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.

2. Total energy requirements of the project by fuel type and end use.

3. Energy conservation equipment and design features.

4. Initial and life–cycle energy costs or supplies.

5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials maybe discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.

3. The effects of the project on peak and base period demands for electricity and other forms of energy.

4. The degree to which the project complies with existing energy standards.

5. The effects of the project on energy resources.

6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.

3. The potential for reducing peak energy demand.

4. Alternate fuels (particularly renewable ones) or energy systems.

5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short–Term Gains versus Long–Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176. Public Resources Code.

HISTORY

1. New Appendix F filed 12–31–74 as an emergency; designated effective 1–7–75 (Register 75, No. 1).
2. Certificate of Compliance filed 4–29–75 (Register 75, No. 18).
3. Repealer and new Appendix F filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1–1–77.
4. Amendment of Section II filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
5. Change without regulatory effect amending section II.D.2. filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

Appendix G

Environmental Checklist Form

1. Project title: _____

2. Lead agency name and address:

_____

_____

_____

3. Contact person and phone number: _____

4. Project location: _____

5. Project sponsor's name and address:

_____

_____

_____

6. General plan designation: _____ 7. Zoning: _____

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

_____

_____

_____

_____

9. Surrounding land uses and setting: Briefly describe the project's surroundings:

_____

_____

_____

_____

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

_____

_____

_____

_____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology/Soils
☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality	☐ Land Use/Planning
☐ Mineral Resources	☐ Noise	☐ Population/Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Utilities/Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature _____ Date _____

Printed Name _____ For _____

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project–specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project–specific screening analysis).

2) All answers must take account of the whole action involved, including off–site as well as on–site, cumulative as well as project–level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross–referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:
a) the significance criteria or threshold, if any, used to evaluate each question; and
b) the mitigation measure identified, if any, to reduce the impact to less than significance.

SAMPLE QUESTION:
Issues:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS—Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☐
III. AIR QUALITY—Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES—Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐
V. CULTURAL RESOURCES—Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐
VI. GEOLOGY AND SOILS—Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist–Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic–related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on– or off–site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐
d) Be located on expansive soil, as defined in Table 18–1–B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐
VII. HAZARDS AND HAZARDOUS MATERIALS— Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one–quarter mile of an existing or proposed school?	☐	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY—Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre–existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on– or off–site?	☐	☐	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on– or off–site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐
g) Place housing within a 100–year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☐
h) Place within a 100–year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐
IX. LAND USE AND PLANNING—Would the project:				
a) Physically divide an established community?	☐	☐	☐	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES—Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of a locally–important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XI. NOISE—				
Would the project result in:	☐	☐	☐	☐
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
XII. POPULATION AND HOUSING—Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or directly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☐
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XIV. RECREATION—				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
XV. TRANSPORTATION/TRAFFIC—Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
f) Result in inadequate parking capacity?	☐	☐	☐	☐
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS—				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐
XVII. MANDATORY FINDINGS OF SIGNIFICANCE—				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections *21080(c), 21080.1,* 21080.3, *21082.1,* 21083, 21083.3, 21093, 21094 and 21151, Public Resources Code; *Sundstrom v. County of Mendocino,* 202 Cal.App.3d 296 (1988); *Leonoff v. Monterey Board of Supervisors,* 222 Cal.App.3d 1337 (1990).

HISTORY

1. New Appendix G filed 10–8–76; effective thirtieth day thereafter (Register 76, No 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1–1–77.

2. Amendment of subsections (n) and (o) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment of subsections (j) and (v) and new subsections (y) and (z) filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
4. Amendment of first paragraph and subsection (c) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
5. Repealer of former Appendix G and relettering and amendment of former Appendix I to new Appendix G filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
6. Change without regulatory effect amending Appendix G filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

Appendix H

Environmental Information Form

(To be completed by applicant)

Date Filed _____

GENERAL INFORMATION

1. Name and address of developer or project sponsor: _____

2. Address of project: _____

Assessor's Block and Lot Number _____

3. Name, address, and telephone number of person to be contacted concerning this project: _____

4. Indicate number of the permit application for the project to which this form pertains: _____

5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

6. Existing zoning district: _____

7. Proposed use of site (Project for which this form is filed): _____

PROJECT DESCRIPTION

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off–street parking provided.
12. Attach plans.
13. Propose scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

YES NO

___ ___ 21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.
___ ___ 22. Change in scenic views or vistas from existing residential areas or public lands or roads.
___ ___ 23. Change in pattern, scale or character of general area of project.
___ ___ 24. Significant amounts of solid waste or litter.
___ ___ 25. Change in dust, ash, smoke, fumes or odors in vicinity.
___ ___ 26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.
___ ___ 27. Substantial change in existing noise or vibration levels in the vicinity.
___ ___ 28. Site on filled land or on slope of 10 percent or more.
___ ___ 29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.
___ ___ 30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).
___ ___ 31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).
___ ___ 32. Relationship to a larger project or series of projects.

ENVIRONMENTAL SETTING

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.
34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one–family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set–back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date _____ _____

(Signature)

For _____

NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. New Appendix H filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 40). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1–1–77.
2. Amendment filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix I

Notice of Preparation

TO: _____ FROM: _____

(Responsible Agency) (Lead Agency)

_____ _____

(Address) (Address)

_____ _____

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the probable environmental effects are contained in the attached materials. A copy of the Initial Study ☐ is, ☐ is not, attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

Please send your response to _____ at the address shown above. We will need the name for a contact person in your agency.
Project Title:
Project Applicant, if any:
Date_____ Signature _____
Title _____
Telephone _____

Reference: California Administrative Code, Title 14, Sections 15035.7, 15054.3, 15066.

HISTORY

1. Repealer and new Appendix I filed 8–19–94; operative 9–19–94 (Register 94, No. 33). For prior history, see Register 80, No. 19.
2. Relettering of former Appendix I to Appendix G and relettering of former Appendix J to new Appendix I filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix J

Examples of Tiering EIR's

FIRST TIER EIR (15152)	• project encompasses separate but related projects such as general plan, zoning, development • later tiers move from general to specific analysis of projects
Later Project EIR	• later project is consistent with general plan or zoning • initial study must examine significant effects not covered in prior EIR • later EIR must state lead agency is using tiering concept and must comply with section 15152
STAGED EIR (15167)	• one large project will require a number of discretionary approvals from govt. agencies and one of those approvals will occur more than two years before construction commences
Supplement to the Staged EIR	• supplements to the staged EIR are prepared for later government agency approvals on the same overall project if information available at the time of that later approval would permit consideration of additional environmental impacts, mitigation measures or reasonable alternatives
PROGRAM EIR (15168)	• series of actions or activities that can be characterized as one large project and are related either: • geographically • as logical parts of a change of activities • in connection with rules, regulations, plans or other general criteria governing a continuing program • as individual activities carried out under common authority (statutory or regulatory) and having similar environmental effects which can be mitigated in similar ways
Subsequent Project EIR	• only if subsequent activity has effects not examined in the previously certified program EIR will additional environmental documentation be required (if subsequent activity has no new effects, that activity is covered by the program EIR)
MASTER EIR (15175)	• alternative to project, staged, or program EIR • can be used for: – general plan (or gen. plan element, amendment, or update) – redevelopment plan projects (public or private) – project consisting of phases or smaller individual projects – other activities described in 15175 • after five years from initial certification, adopting authority must review the Master EIR and prepare subsequent or supplemental EIR if substantial changes have occurred with resepct to circumstances under which the original Master EIR was adopted • no new EIR is required for subsequent projects within the scope of the Master EIR which cause no additional significant effect
Focused EIR (15177)	• a subsequent, Focused EIR is required only where: – substantial new/additional information shows adverse environmental effects not examined in Master EIR or more significant than described in EIR, or – substantial new/additional information shows mitigation measures previously determined to be infeasible are now feasible and will avoid/reduce the significant effects to a level of insignificance

SPECIAL SITUATIONS/EIRs

Multiple-family residential development/residential and commercial or retail mixed-use development (PRC 21158.5 and Guideline § 15179.5)

- project is multiple-family residential development up to 100 units or is a residential and commercial or retail mixed-use development of not more than 100,000 square feet
- if project complies with procedures in section 21158.5, only a focused EIR need be prepared, notwithstanding the fact that the project wasn't identified in the Master EIR

Redevelopment Project (15180)

- all public and private activities or undertakings in furtherance of a redevelopment plan (public or private) constitute a single project
- the redevelopment plan EIR is treated as a program EIR
- no subsequent EIR is required for individual components of the redevelopment plan unless substantial changes or substantial new information triggers a subsequent EIR or supplement to an EIR pursuant to (sections 15162 or 15163)

Housing/neighborhood commercial facilities (15181)

- a project involving construction of housing or neighborhood commercial facilities in an urbanized area
- a prior EIR for a specific plan, local coastal program, or port master plan may be used as the EIR for such a project (no new EIR need be prepared) provided section 15181 procedures are complied with

Projects Consistent with Community Plan, General Plan, or Zoning (15183)

- a project which is consistent with a community plan adopted as part of a general plan or zoning ordinance or a general plan of a local agency and where there was an EIR certified for the zoning action or master plan
- the EIR for the residential project need only examine certain significant environmental effects, as outlined in section 15183

Regulations on Pollution Control Equipment (PRC section 21159)

- section 21159 requires environmental analysis of reasonably foreseeable methods of compliance at the time of adoption of rule or regulation requiring the installation of pollution control equipment
- an EIR prepared at the time of adoption of the rule or regulation is deemed to satisfy the requirement of section 21159

Installation of Pollution Control Equipment (PRC section 21159.1)

- a focused EIR is permitted where project 1) consists solely of installation of pollution control equipment; 2) is required by rule or regulation adopted by the State Air Resources Board, an air pollution control district or air quality management district, the State Water Resources Control Board, a California regional water quality control board, the Dept. of Toxic Substances Control, or the California Integrated Waste Management Board; and 3) meets the procedural requirements outlined in section 21159.1

History

1. New Appendix J filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Relettering of former Appendix J to Appendix I and new Appendix J filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix K

Criteria for Shortened Clearinghouse Review

Under exceptional circumstances, and when requested in writing by the lead agency, the State Clearinghouse in the Office of Planning and Research (OPR) may shorten the usual review periods for proposed negative declarations, mitigated negative declarations and draft EIRs submitted to the Clearinghouse. A request must be made by the decision-making body of the lead agency, or by a properly authorized representative of the decision-making body.

A shortened review period may be granted when any of the following circumstances exist:

(1) The lead agency is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

(2) The public project applicant is under severe time constraints with regard to obtaining financing or exercising options which cannot be met without shortening the review period.

(3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

(4) The health and safety of the community would be at risk unless the project is approved expeditiously.

(5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

Shortened review cannot be provided to a draft EIR or proposed negative declaration or mitigated negative declaration which has already begun the usual review process. Prior to requesting shortened review, the lead agency should have already issued a notice of preparation and received comments from applicable State agencies, in the case of an EIR, or consulted with applicable State agencies, in the case of a proposed negative declaration or mitigated negative declaration.

No shortened review period shall be granted unless the lead agency has contacted and obtained prior approval for a shortened review from the applicable state responsible and trustee agencies. No shortened review shall be granted for any project which is of statewide, regional, or areawide significance, as defined in Section 15206 of the guidelines.

History

1. New Appendix K filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Repealer of Appendix K and relettering of former Appendix L to new Appendix K filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix L

Notice of Completion of Draft EIR

Project Title

Project Location — Specific

Project Location — City _____ Project Location — County _____

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency _____ Division _____

Address Where Copy of EIR is Available

Review Period

Contact Person _____ Area Code _____ Phone Extension _____

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21092, 21152 and 21153, Public Resources Code.

HISTORY

1. New Appendix L filed 9–7–2004; operative 9–7–2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37). For prior history, see Register 98, No. 44.
2. Change without regulatory effect amending NOTE filed 10–6–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Chapter 4. Resources Agency—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

RESOURCES AGENCY
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION
1100 K STREET
SACRAMENTO, CALIFORNIA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 4, Division 6 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 4. Resources Agency—Conflict of Interest Code

Section
15411. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300 et seq., Government Code.

HISTORY

1. New Chapter 4 (Sections 15411–15454, not consecutive) filed 2–2–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–7–77 (Register 78, No. 5)
2. Repealer of Chapter 4 (Articles 1–5, Sections 15411–15454, not consecutive) and new Chapter 4 (Section 15411 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment of section and appendix filed 11–21–95; operative 12–21–95. Approved by Fair Political Practices Commission 9–28–95. Submitted to OAL for printing only (Register 95, No. 47).
4. Amendment of general provisions and appendix filed 7–28–2006; operative 8–27–2006. Approved by Fair Political Practices Commission 5–24–2006 (Register 2006, No. 30).

* * *

Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 14. Natural Resources

Division 6.3. Office of Planning and Research

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Division 6.3. Office of Planning and Research

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Division 6.3. Office of Planning and Research

Chapter 1. Regulations for Designation of Lead Agency for the Preparation of Environmental Documents

Article 1. General

§ 16000. Authority.

The regulations contained herein are prescribed by the Director of the Office of Planning and Research pursuant to authority granted in Div. 13, Pub. Resources Code and Title 7, Division 1, Chapter 1.5, Gov. Code, and to implement, interpret or make specific Section 21165 of the Pub. Resources Code consistent with the Guidelines for Implementation of the California Environmental Quality Act of 1970 (Div. 6, Title 14, Cal. Adm. Code) and to establish criteria and procedures for designation of the lead agency for the preparation of environmental documents in the event of a dispute between two or more public agencies.

NOTE: Authority cited: Section 21082, Public Resources Code and Title 7, Division 1, Chapter 1.5, Gov. Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. New Division 6.3 (§§ 16000 through 16041) filed 4–12–74; effective thirtieth day thereafter (Register 74, No. 5).
2. Amendment filed 11–22–78; effective thirtieth day thereafter (Register 78, No. 47).

Article 2. Purpose

§ 16001. Purpose.

The purpose of these regulations is to specify the criteria and procedures to be followed by the Office of Planning and Research in resolving lead agency disputes.

Article 3. Policy

§ 16002. Policy.

It is the policy of the Office of Planning and Research that these regulations implement the principles, objectives and criteria for the designation of a lead agency specified in the State Guidelines.

Article 4. Submission of Dispute to OPR

§ 16010. Definitions.

Words used in these regulations, unless otherwise defined, shall have the meaning ascribed to them in the State Guidelines. In addition, the following definitions not contained in the State Guidelines are used:

(a) State Guidelines means the Guidelines for Implementation of the California Environmental Quality Act of 1970 adopted by the Secretary for Resources (Div. 6, Title 14, Cal. Adm. Code Sections 15000–15180).

(b) OPR means the Office of Planning and Research.

(c) Director means the Director of the Office of Planning and Research or the Director's designee.

(d) Interested Person means public agencies having jurisdiction over the project, public agencies which approve or comment on the project, consultants hired with respect to the project, and individuals or groups known to be interested in the project.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 16010–16017) and new Article 4 (Sections 16010–16016, not consecutive) filed 11–22–78;effective thirtieth day thereafter (Register 78, No. 47).

§ 16011. General.

In the event a dispute arises between two or more public agencies as to which agency shall be a "lead agency" pursuant to the State Guidelines, the following procedures and criteria shall apply.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5. Government Code Reference Section 21165, Public Resources Code.

§ 16012. Dispute, What Constitutes.

As used in these regulations, "dispute" means a contested, active difference of opinion between two or more public agencies as to which shall prepare environmental documents. A dispute exists where each such public agency claims that it either has or does not have the obligation to prepare such environmental documents. OPR will not designate the lead agency in the absence of such a dispute.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

§ 16013. Public Agency Consultation.

Prior to submission of a request for designation to OPR, the disputing agencies, or the disputing agencies and the project applicant for a project described in subdivision (c) of Section 21065 if such applicant requests the designation, shall consult with each other in an effort to resolve the dispute pursuant to the State Guidelines. Such consultation should include efforts to designate a lead agency by agreement. Such agencies or applicant may request OPR to assist in arranging for this consultation.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

§ 16014. Request for Designation.

A request for designation of the lead agency pursuant to this Article shall be made in writing to the Director. It shall be signed by an executive of the public agency making the request, or by the project applicant for a project described in subdivision (c) of Section 21065 if such applicant requests the designation. A complete request shall set forth:

(a) The general nature of the dispute,

(b) The other disputing agencies,

(c) Written information showing that the requesting agency or project applicant and the other disputing agencies have consulted pursuant to Section 16013 in an effort to resolve the dispute,

(d) A statement of contentions pursuant to Section 16015 from the agency or project applicant requesting the designation, and

(e) Written information showing that the agency or applicant requesting the designation has given notice in writing to, and such notice has been received by, all disputing agencies and the project applicant, stating that; i) the dispute is being submitted to OPR for resolution; and that, ii) each disputing agency is required to prepare and send a statement of contentions to OPR within 10 days after receipt of such notice.

OPR may require as a part of the application that notice of the request be published in newspapers of general circulation where the lead agency dispute exists. Such notice may allow for submission of written comments on or before a specified date, and it may also state whether or not a hearing will be held, and may specify the time and place of the hearing.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

§ 16015. Statement of Contentions: List of Interested Persons.

(a) In the event that the lead agency dispute is not resolved by consultation pursuant to Section 16013, and upon a request for designation made pursuant to Section 16014, the Director shall require a statement of contentions from each disputing agency and from the project applicant if requesting the designation, and may require a statement of contentions from the project applicant if not requesting the designation.

(b) Each disputing agency shall prepare a written statement of contentions in support of its claim as to which agency should or should not be the lead agency. The statement shall contain the following information:

(1) A description of the project.

(2) A description of the agency's responsibility for constructing, approving, supervising, and financing the project as a whole.

(3) Citation of the agency's general governmental powers relating to the project.

(4) Data outlining all aspects of the agency's relationship to the project.

(5) The date the agency first undertook formal action, if any, on the project and a chronology of actions taken and to be taken concerning the project.

(6) A list of all interested persons who might comment on the project.

(7) Such other information as the Director may require.

(c) The project applicant requesting the designation, or a project applicant required by the Director pursuant to subdivision (a), shall prepare a written statement of contentions which shall contain the following information:

(1) A description of the project.

(2) A list of all interested persons who might comment on the project.

(3) A brief statement as to which disputing agency, if any, the applicant believes is appropriate to adequately fulfill the requirements of CEQA and complies with the lead agency criteria set forth in State Guidelines Section 15065, and the applicant's reasons in support thereof.

(4) Such other information as the Director determines would assist in designating the appropriate lead agency.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

§ 16016. Distribution of Statement.

Each disputing agency shall mail a copy of the statement of contentions to all other disputing agencies, to the applicant, and to OPR within 10 calendar days after the agency receives the notice specified in Section 16014. If an agency requested the designation, the agency shall mail such statement to all other disputing agencies and to the applicant when the agency submits a completed request to OPR. Each disputing agency shall make such statement or an informative summary thereof available to all interested persons upon request. If an informative summary is used, interested persons shall be given the full statement of contentions upon request.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

Article 5. Designation on the Statements

§ 16020. Designation on the Statements.

The Director may designate a lead agency on the basis of the completed requests and written statements, or may require a hearing. The Director may request additional written information from any disputing agency, applicant, or interested person without extending the time period for designation provided in Section 16021. Written notice of such request shall be given to all disputing agencies and the project applicant if the applicant has been required to submit a statement of contentions.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Amendment filed 11–22–78; effective thirtieth day thereafter (Register 78, No. 47).

§ 16021. Designation: Findings.

In making a designation of lead agency, the Director shall find which of the disputing agencies is most appropriate to carry out the obligations of a lead agency. In making this finding, the Director shall consider the capacity of each such agency adequately to fulfill the requirements of CEQA. In addition, the Director shall consider the lead agency criteria set forth in the State Guidelines Section 15065. Generally, such criteria will control unless the Director finds that another agency has greater capacity to carry out the requirements of CEQA. The designation shall be made within 21 calendar days of receipt by OPR of the completed request for designation.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Amendment filed 11–22–78; effective thirtieth day thereafter (Register 78, No. 47).

§ 16022. Designation: Form.

The designation shall be in writing and it shall be published in the *California EIR Monitor* and made available to all public agencies involved in the dispute and to all interested persons. The designation shall name the lead agency and it shall include findings upon which the designation is made. It shall be signed by the director.

Article 6. Hearing

§ 16030. Hearing: When Called.

If the Director finds on the basis of consultation pursuant to Section 16013 or the completed request for designation that the dispute involves issues of general application to other projects, or is of regional or statewide impact, or that the project involves substantial public interest or concern, the Director may require a hearing prior to making a designation. Notice of the time and place of the hearing shall be published in newspapers of general circulation where the dispute exists and be sent to all interested parties, disputing agencies, and the applicant not later than 7 calendar days after receiving the completed request for designation.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Amendment filed 11–22–78; effective thirtieth day thereafter (Register 78, No. 47).

§ 16031. Presiding Officer.

The presiding officer at the hearing shall be the Director or any other person designated by the Director.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Amendment filed 11–22–78; effective thirtieth day thereafter (Register 78, No. 47).

§ 16032. Order of Proceedings.

(a) The hearing will ordinarily proceed in the following order:

(1) Identification of the dispute and a brief, fair summary of correspondence received by the presiding officer.

(2) Presentation by or on behalf of the disputing agency which initially submitted a request for certification pursuant to Section 16014, if such agency wishes to expand upon the material contained in its statement of contentions.

(3) Other disputing agencies wishing to expand upon the material contained in their statement of contentions.

(4) Other speakers concerning the dispute. Any person wishing to speak shall be heard.

(b) Questions by the presiding officer may be asked at any time during any presentations.

(c) A record of the testimony may be made.

§ 16033. Presentations.

Presentations shall be to the point, shall be as brief as possible and shall assume that OPR is familiar with the dispute from reading the statement of contentions.

§ 16034. Summary of Hearing.

The presiding officer may prepare a summary of the testimony at the hearing and shall prepare a recommended decision. The director shall consider the summary and recommended decision together with the statement of contentions and any other material presented at the hearing in making his decision.

§ 16035. Designation: Findings.

The provisions of Section 16021 shall apply to a designation made pursuant to this Article.

Article 7. Administrative Record

§ 16040. Administrative Record.

For the purposes of any court proceeding, the administrative record of OPR shall be deemed to be the request or requests for designation, the statement of contentions, the correspondence received with regard to the dispute, evidence introduced at the hearing, if any, the record of the hearing, if one is made, the hearing summary and recommended decision, and any other evidence considered by the Director.

NOTE: Authority cited: Division 13, Public Resources Code; Title 7, Division 1, Chapter 1.5, Government Code. Reference: Section 21165, Public Resources Code.

HISTORY

1. Amendment filed 11-22-78; effective thirtieth day thereafter (Register 78, No. 47).

§ 16041. Final Decision.

The decision of the director, whether made under Article 5. or 6. of this Division, shall be final and binding on the parties to the dispute.

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Title 14. Natural Resources

Division 7. California Integrated Waste Management Board

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Division 7. California Integrated Waste Management Board

Chapter 1. General Provisions

Article 1. Emergency Waiver of Standards

§ 17000. Waiver of Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 1 heading and section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of HISTORY 3 (Register 95, No. 36).
5. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 36).

§ 17001. Purpose and Limitations of Waiver.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17002. Reporting Requirement.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17003. Effect on Other Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17004. Diversion Requirements.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17005. LEA Report to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17006. Executive Director's Duties and Powers Relative to the Waiver.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 2–11–93 as an emergency; operative 2–11–93 (Register 93, No. 7). A Certificate of Compliance must be transmitted to OAL 6–11–93 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 4.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 46).
3. New section filed 11–12–93 as an emergency; operative 11–12–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL 3–12–94 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 6).
5. Editorial correction of HISTORY 3, adding HISTORY 4, and deleting text (Register 95, No. 36).

§ 17008. Waiver of Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95

or emergency language will be repealed by operation of law on the following day.

5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17009. Purpose and Limitations of Waiver.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17010. Reporting Requirement.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 14.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17011. Effect on Other Standards, Ordinances, Regulations and Laws.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 14.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17012. Diversion Requirements.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 14.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17013. LEA Report to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 14.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95

or emergency language will be repealed by operation of law on the following day.

6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17014. Executive Director's Duties and Powers Relative to the Waiver.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 1–21–94 as an emergency; operative 1–21–94 (Register 94, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–23–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 93, No. 14.
2. New section refiled 5–19–94 as an emergency; operative 5–19–94 (Register 94, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–16–94 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–19–94 as an emergency; operative 9–19–94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–17–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–19–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–18–95 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
6. New section refiled 9–15–95 as an emergency; operative 9–15–95 (Register 95, No. 37). A Certificate of Compliance must be transmitted to OAL by 1–15–96 or emergency language will be repealed by operation of law on the following day.
7. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 22).

§ 17015. LEA Report to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–5–92 as an emergency; operative 10–5–92 (Register 92, No. 41). A Certificate of Compliance must be transmitted to OAL 2–2–93 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 14).

§ 17016. Executive Director's Duties and Powers Relative to the Waiver.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–5–92 as an emergency; operative 10–5–92 (Register 92, No. 41). A Certificate of Compliance must be transmitted to OAL 2–2–93 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 93, No. 14).

Article 2. Contracting with Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 17020. Definitions.

As used in these regulations:

(a) "Architectural, engineering, environmental, land surveying services," and "construction project management" have the respective meanings set forth in Section 4525 of the Government Code.

(b) "Board" means the California Integrated Waste Management Board or the Board's designee authorized to contract for architectural, engineering, environmental, land surveying and construction project management services on behalf of the board.

(c) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, environmental services, land surveying, or construction project management.

(d) "M/WBE" means Minority Business Enterprise and/or Women Business Enterprise.

(e) "DVBE" means Disabled Veteran Business Enterprise.

(f) "Small Business Firm" has the meaning set forth in Section 14837(c) of the Government Code.

NOTE: Authority cited: Section 40502, Public Resources Code; Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17021. Publication of Request for Qualifications.

(a) The board shall publish a Request for Qualifications (RFQ) for expected architectural, engineering, environmental, land surveying and construction project management services in the State Contracts Register and in statewide publications of appropriate professional societies.

(b) The announcement shall include the following information: a contract identification number, a brief description of services required; location, budget, and duration; eligibility and preferences; submittal requirements and deadlines; and name and telephone number of board contact for questions on the publication.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Sections 4526, 4527 and 4529.5, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17022. Selection Criteria.

The board shall select firms based on their ability to perform the specific functions outlined in the RFQ. The criteria for selection will include:

(a) Overall professional experience, reliability, and continuity of the firm as related to the tasks described in the RFQ.

(b) Professional experience of the firm in executing contracts of a similar nature.

(c) Adequacy of personnel numbers within specific disciplines required to complete the work required by the RFQ.

(d) Experience and training of key personnel as related to the work described in the RFQ.

(e) Adequacy of number of principal(s) which are intended to be assigned to the contract.

(f) Knowledge of applicable regulations and technology associated with the contract.

(g) Quality and timeliness of recently completed or nearly completed projects which were similar to the work described in the RFQ.

(h) Specialized qualifications for the services to be performed.

(i) Compliance with M/WBE and DVBE goals or good faith effort pursuant to Public Contract Code section 10115 et seq.

These factors shall be weighted by the board according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Sections 4526, 4527 and 4529.5, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17023. Selection of Firms.

After expiration of the deadline date in the publications, the board shall review and rank eligible firms on file at the board using the selection criteria contained in Section 17022. The board shall conduct interviews with no less than the top three ranked firms to discuss qualifications and methods for furnishing the required services. From the firms with which discussions are held, the board shall select no less than three, in order of preference, based upon the established criteria, who are deemed to be the most highly qualified to provide the services required.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Sections 4526, 4527 and 4529.5, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17024. Negotiation of Contract.

(a) The board shall request a detailed Fee Proposal from the best qualified firm and shall require a State's Estimate of Fees to be prepared by board staff prior to negotiations. The State's estimate shall remain confidential until award of contract or abandonment of any further procedure for the services to which it relates. If the board determines the State's estimate to be unrealistic for any reason, the board shall require the estimate to be reevaluated and modified if necessary.

(b) The board shall attempt to negotiate a contract with the best qualified firm. Should the board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at fair and reasonable compensation, negotiations with that firm shall be terminated. The board shall then undertake negotiations with the second most qualified firm. Failing accord, negotiations shall be terminated. The board shall then undertake negotiations with the third most qualified firm. Failing accord, negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract with any of the selected firms, the board may select additional firms in the manner prescribed above and continue the negotiation procedure until an agreement is reached.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Section 4528, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17025. Contract Agreement.

(a) After successful negotiations, the board and the firm shall complete and sign the contract agreement.

(b) In instances where the State effects a necessary change in the contract during the course of performance of the services, the firm's compensation may be adjusted by mutual written agreement.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Section 4528, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17026. Contracting in Phases.

Should the board determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price in the initial instance, provided that the board shall have determined that the firm is best qualified to perform the whole project at reasonable cost, and the contract contains provisions that the state, at its option, may utilize the firm for other phases and the firm will accept a fair and reasonable price for subsequent phases to be later negotiated, mutually–agreed upon and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Section 4526, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17027. Emergency Contracting.

Where the board makes a finding of emergency, the board may negotiate a contract for such services without following procedures in Sections 17020 – 17029. The finding of emergency must include a finding that conditions at a solid waste facility pose an imminent threat to life or health and insufficient time exists to implement the foregoing procedures to secure services. The selection criteria will be the same as those listed in Section 17022 and fees will still be negotiated as described in Section 17024. The announcement, formal ranking, and interviewing procedures, as specified in Sections 17021 and 17023 may be by–passed.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Sections 45001, 45002, 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment adopting this section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17028. Small Business Participation.

The board shall endeavor to provide copies of announcements for services to Small Business Firms that have indicated an interest in receiving such announcements. Failure of the board to send a copy of an announcement to any firm shall not invalidate any selection or contract.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Sections 4526 and 4527, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.

[The next page is 720.3.]

2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

§ 17029. Unlawful Activities and Conflict of Interest.

Practices which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration are prohibited. Additionally, a board employee shall not participate in the selection process if the employee has a relationship of a type specified in section 87100 of the Government Code, with a person or business entity seeking a contract subject to this chapter.

NOTE: Authority cited: Section 4526, Government Code; Section 40502, Public Resources Code. Reference: Section 4526, Government Code; Sections 45402 and 45403, Public Resources Code.

HISTORY

1. New section filed 8–1–91 as an emergency; operative 8–1–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 11–29–91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–91 order including amendment of section transmitted to OAL 11–26–91 and filed 12–26–91 (Register 92, No. 13).
3. Editorial correction restoring HISTORY 1. (Register 92, No. 18).

Article 3. Implementation of Federal Laws

§ 17031. Regional Boundaries.

Pursuant to § 4006(a) of the Resource Conservation and Recovery Act of 1976, P.L. 94–580, 42 USC § 6946, the following boundaries are identified for solid waste management in California:

(a) The boundaries of each of the 58 counties in California for addressing local issues;

(b) The boundaries of the jurisdiction of each of the ten Metropolitan Councils of Governments and of the California Tahoe Regional Planning Agency for addressing regional issues. These boundaries are as follows:

(1) The boundaries of the area lying within the jurisdiction of the Association of Bay Area Governments which include the Counties of Alameda, Contra Costa, Marin, San Francisco, Napa, San Mateo, Santa Clara, Solano and Sonoma;

(2) The boundaries of the area lying within the jurisdiction of the Association of Monterey Bay Area Governments which include the Counties of Monterey and Santa Cruz;

(3) The boundaries of the area lying within the jurisdiction of the Comprehensive Planning Organization of the San Diego Region which include the County of San Diego;

(4) The boundaries of the area lying within the jurisdiction of the Sacramento Regional Area Planning Commission which include the Counties of Sacramento, Sutter, Yolo and Yuba and the City of Roseville;

(5) The boundaries of the area lying within the jurisdiction of the Southern California Association of Governments which include the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura;

(6) The boundaries of the area lying within the jurisdiction of the Council of Fresno County Governments which include the County of Fresno;

(7) The boundaries of the area lying within the jurisdiction of the Kern County Council of Governments which include the County of Kern;

(8) The boundaries of the area lying within the jurisdiction of the San Joaquin County Council of Governments which include the County of San Joaquin;

(9) The boundaries of the area lying within the jurisdiction of the Santa Barbara County—Cities Area Planning Council which include the County of Santa Barbara;

(10) The boundaries of the area lying within the jurisdiction of the Stanislaus Area Association of Governments which include the County of Stanislaus; and

(11) The boundaries of the area lying within the jurisdiction of the California Tahoe Regional Planning Agency which include that part of Lake Tahoe within the jurisdiction of the State of California, the adjacent parts of the Counties of El Dorado and Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, MDB&M;

(c) The boundaries of the State of California for addressing statewide issues.

Comment: This regulation may be modified from time to time identifying additional or different regional boundaries pursuant to Section 4006(a) of the Act. The method for identifying unspecified State, regional and local issues will be set forth in the regulation concerning identification of agencies and their responsibilities. Regional issues will be determined by the State Solid Waste Management Board with the advice of the affected counties and regional agencies.

HISTORY

1. New Article 3 (Section 17031) filed 12–13–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 17032. Agencies.

Pursuant to Section 4006(b) of the Resource Conservation and Recovery Act of 1976, P.L. 94–580, 42 USC Section 6946 and Section 66793 of the Government Code, the following responsible agencies are identified for solid waste management in California:

(a) Within each of the counties in California, the Boards of Supervisors are responsible, with the approval of a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, for local planning and implementation of solid waste management in accordance with Section 66780 of the Government Code with the following exceptions:

(1) Within the County of *Alameda*, the Alameda County Solid Waste Management Authority is responsible for solid waste planning and implementation;

(2) Within the County of *Merced*, the Merced County Solid Waste Advisory Board is responsible for solid waste planning and implementation;

(3) Within the County of *Santa Clara*, the Solid Waste Planning Committee is responsible for solid waste planning and implementation;

(4) Within the County of *Ventura*, the Ventura Regional County Sanitation District is responsible for solid waste planning and implementation with the approval of a majority of the cities within the county which contain a majority of the population of the incorporated area of the county;

(5) Within the County of *Los Angeles*, the Los Angeles County Solid Waste Management Committee is the responsible countywide agency for solid waste planning. Implementation shall be accomplished by those responsible agencies identified in the Los Angeles County Solid Waste Management Plan.

(b) Regional issues will be determined by the State Solid Waste Management Board with the advice of the affected counties and regional agencies.

(c) For regional planning, the following agencies are identified:

(1) The Association of Bay Area Governments is responsible for regional issues for solid waste management planning within the boundaries of the area including the Counties of Alameda, Contra Costa, Marin, San Francisco, Napa, San Mateo, Santa Clara, Solano and Sonoma;

(2) The Sacramento Regional Area Planning Commission is responsible for regional issues for solid waste management planning within the boundaries of the area including the Counties of Sacramento, Sutter, Yolo, Yuba, and the City of Roseville;

(3) The Southern California Association of Governments is responsible for regional issues for solid waste management planning within the boundaries of the area including the Counties of Imperial, Los Angeles, Orange, Riverside, and San Bernardino.

(4) The California Tahoe Regional Planning Agency is responsible for regional issues for solid waste management planning within the boundaries of the area including that part of Lake Tahoe within the jurisdiction

of the State of California, the adjacent parts of the Counties of El Dorado and Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15, North, Range 16 East, M.D.B.&M.

(d) For statewide solid waste management planning and implementation the following are identified:

(1) The State Solid Waste Management Board is responsible for solid waste management planning and implementation within the boundaries of the State of California;

(2) The State Department of Health is responsible for hazardous waste management planning and implementation within the boundaries of the State of California.

Comment: The State Solid Waste Management Board widely distributed to the interested public a request for nominations of agencies. Based on the nominations received, a proposed regulation was drafted and circulated for comment prior to two public hearings; one on April 4, 1978 in the State Building, 455 Golden Gate Avenue, Room 1200, San Francisco, California, and the other on April 5, 1978 in the Inglewood City Hall, One Manchester Boulevard, Community Room, Inglewood, California. This regulation was finally considered at a regularly scheduled public State Solid Waste Management Board Meeting on April 21, 1978, and was adopted at that time as amended.

NOTE: Authority cited: Section 66790, Government Code, Section 6946, 42 United States Code and Section 4006, 90 Stat. 2816, P.L. 94–580, Federal Resource Conservation and Recovery Act of 1976. Reference: Section 66793, Government Code.

HISTORY

1. New section filed 4–27–78; effective thirtieth day thereafter (Register 78, No. 17).

Article 4. Public Records

§ 17041. Scope and Applicability.

This article shall apply to all requests to the Board pursuant to the California Public Records Act (Government Code sections 6250 *et seq.*) for the disclosure of public records or for maintaining the confidentiality of data received by the Board.

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of section and NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17042. Disclosure Policy.

It is the policy of the Board that all records not exempted from disclosure by state or federal law shall be available for public inspection as provided in the California Public Records Act, Government Code section 6250 *et seq.* Requests for records that are not exempt from disclosure by state or federal law, and which are determined as provided in this article to be confidential or proprietary shall be evaluated to determine whether, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of section and NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17043. Requests for Public Records.

All requests for public records, as defined in Government Code section 6252, shall be made in writing to the Board's custodian of records, and shall be addressed as follows:

Custodian of Records
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17044. Submittal of Trade Secrets.

Any person submitting to the Board any records containing data claimed to be a "trade secret," as defined in Public Resources Code section 40062, shall at the time of submission, identify all information which the person believes is a trade secret, and shall provide the name, address and telephone number of the individual to be contacted if the Board receives a request for disclosure of or seeks to disclose the data claimed to be trade secret. Any information not identified by the person as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law.

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of section and NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17045. Submittal of Confidential or Proprietary Data.

Any person submitting to the Board any records containing data claimed to be confidential or proprietary, or to be otherwise exempt from disclosure under Government Code section 6250 et seq., or under other applicable provisions of law shall, at the time of submission, identify in writing the portions of the records containing such data as "confidential" or "proprietary," and shall provide the name, address and telephone number of the individual to be contacted if the Board receives a request for disclosure of or seeks to disclose the data claimed to be confidential.

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of section and NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17046. Disclosure of Trade Secrets and Confidential or Proprietary Data.

(a) This section shall apply to all data in the custody of the Board:

(1) which is designated "trade secret," as defined in Public Resources Code section 40062,

(2) which is considered by the Board or identified by the person who submitted the data to be confidential or proprietary data,

(3) which is received from a federal, state or local agency with a confidential or proprietary data designation, or

(4) which is exempt from disclosure under Government Code section 6250 et seq., or under other applicable provisions of law.

(b) Confidential or proprietary information shall include, but is not limited to:

(1) personal or business–related financial data, customer client lists, supplier lists and other information of a proprietary or confidential business nature provided by persons in applications, reports, returns, certifications or other documents submitted to the Board which if released would result in harmful effects on the person's competitive position;

(2) tax information prohibited from disclosure, pursuant to the Revenue and Taxation Code.

(c) Upon receipt of a request from a member of the public that the Board disclose data claimed to be trade secret, confidential or proprietary information, or if the Board, upon its own initiative, seeks to disclose such data, the Board shall inform the individual designated pursuant to section 17045 in writing that disclosure of the data is sought, and that a determination is being made as to whether any or all of the information has been properly identified as trade secret, confidential or proprietary information.

(1) If the Board determines that the information is not trade secret, confidential or proprietary information, the Board shall notify the person who furnished the information by certified mail. The person who furnished the information shall have 30 days after receipt of this notice to provide the Board with a complete justification and statement of the grounds on which the trade secret, confidential or proprietary information claim is being made. The justification and statement shall be submitted to the Board by certified mail. The deadline for filing the justification may be extended by the Board upon a showing of good cause made prior to the deadline specified for its receipt.

(A) The justification and statement submitted in support of a claim of trade secret, confidential or proprietary information shall include, but is not limited to, the following:

(1) a specific description of the data claimed to be entitled to treatment as trade secret, confidential or proprietary information;

(2) a statement as to whether it is asserted that the data is a trade secret, is confidential or proprietary information, that disclosure of the data would result in harmful effects on the person's competitive position, and if so, the nature and extent of such anticipated harmful effects;

(3) any statutory or regulatory provisions under which the claim of trade secret, confidentiality or proprietary is asserted;

(4) the period of time for which trade secret, confidential or proprietary treatment is requested;

(5) the extent to which the data has been disclosed to others and whether its trade secret, confidential or proprietary status has been maintained or its release restricted;

(6) trade secret, confidentiality or proprietary determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determination, if available.

(B) Documentation, as specified in (A), in support of a claim of trade secret, confidentiality or proprietary may be submitted to the Board prior to the time disclosure is sought.

(2) The Board shall determine whether the information is protected as trade secret, confidential or proprietary information within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the notice required by paragraph (1). The Board shall notify the person who furnished the information and any party who has requested the information pursuant to a public records request of the determination, by certified mail.

(3) If the Board determines that the information is not protected as trade secret, confidential or proprietary information, the notice required by paragraph (2) shall also specify a date, not sooner than 15 days after the date of mailing of the notice, when the information shall be made available to the public.

(d) Except as provided in subdivision (c), the Board may release information submitted and designated as trade secret, confidential or proprietary information to the following under the following conditions:

(1) Other governmental agencies, and the Legislature, may receive information that has been compiled or aggregated from confidential information, but does not reveal the specific sources of the information, when the information has been requested in connection with a local enforcement agency's or the Board's responsibilities under this division or for use in making reports.

(2) to the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.

(e) Should judicial review be sought of a determination issued in accordance with section (c), the person requesting the data and/or the person making the claim of trade secret, confidential or proprietary information status in relation to the data, may be made a party or parties to the litigation to justify the determination.

NOTE: Authority cited: Section 6253, Government Code; Sections 40502, 42297 and 42325, Public Resources Code. Reference: Section 6250 *et seq.*, Government Code; Sections 40062, 42323 and 42783, Public Resources Code; and Sections 17052.14, 19542, 23612.5 and 45982, Revenue and Taxation Code.

HISTORY

1. New section filed 6–16–94 as an emergency; operative 6–16–94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–14–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 89, No. 1.
2. Certificate of Compliance as to 6–16–94 order transmitted with amendment of section and NOTE to OAL 10–13–94 and filed 11–28–94 (Register 94, No. 48).

§ 17047. Scope.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).

Article 5. Unreliable Contractors, Subcontractors, Borrowers and Grantees

§ 17050. Grounds for Placement on Unreliable List.

The following are grounds for a finding that a contractor, any subcontractor that provides services for a board agreement, grantee or borrower is unreliable and should be placed on the board's Unreliable Contractor, Subcontractor, Grantee or Borrower List ("Unreliable List"). The presence of one of these grounds shall not automatically result in placement on the Unreliable List. A finding must be made by the Executive Director in accordance with section 17054, and there must be a final decision on any appeal that may be filed in accordance with section 17055 et seq.

(a) Disallowance of any and/or all claim(s) to the board due to fraudulent claims or reporting; or

(b) The filing of a civil action by the Attorney General for a violation of the False Claims Act, Government Code section 12650 et. seq; or

(c) Default on a board loan, as evidenced by written notice from board staff provided to the borrower of the default; or

(d) Foreclosure upon real property loan collateral or repossession of personal property loan collateral by the board; or

(e) Filing voluntary or involuntary bankruptcy, where there is a finding based on substantial evidence, that the bankruptcy interfered with the board contract, subcontract, grant or loan; or

(f) Breach of the terms and conditions of a previous board contract, any subcontract for a board agreement, grant, or loan, resulting in termination of the board contract, subcontract, grant or loan by the board or prime contractor; or

(g) Placement on the board's chronic violator inventory established pursuant to Public Resources Code section 44104 for any owner or operator of a solid waste facility; or

(h) The person, or any partner, member, officer, director, responsible managing officer, or responsible managing employee of an entity has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any act in violation of any state

or federal antitrust law in connection with the bidding upon, award of, or performance under any board contract, subcontract, grant or loan; or

(i) The person or entity is on the list of unreliable persons or entities, or similar list, of any other federal or California state agency; or

(j) The person or entity has violated an Order issued in accordance with section 18304; or,

(k) The person or entity has directed or transported to, has or accepted waste tires at, a site where the operator is required to have but does not have a waste tire facility permit; or

(*l*) The person or entity has transported waste tires without a waste tire hauler registration; or,

(m) The person or entity has had a solid waste facility or waste tire permit or a waste tire hauler registration denied, suspended or revoked; or,

(n) The person or entity has abandoned a site or taken a similar action which resulted in corrective action or the expenditure of funds by the Board to remediate, clean, or abate a nuisance at the site; or

(o) The following are additional grounds for a finding that, a person or entity described below should be placed on the Unreliable List:

(1) The person or entity owned 20% or more of an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List;

(2) The person held the position of officer director, manager, partner, trustee, or any other management position with significant control (Principal Manager) in an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List;

(3) The entity includes a Principal Manager who:

1. Was a Principal Manager in an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List; or,

2. Owned 20% or more of an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List;

(4) The entity has a person who owns 20% or more of the entity, if that person:

1. Was a Principal Manager in an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List; or,

2. Owned 20% or more of an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List.

(5) The entity has another entity which owns 20% or more of the entity, if that other entity:

1. Is on the Unreliable List; or,

2. Owned 20% or more of an entity on the Unreliable List at the time of the activity that resulted in its placement on the Unreliable List.

(6) Subsection (o) is not intended to apply to a person or entity that purchases or otherwise obtains an entity on the Unreliable List subsequent to its placement on the Unreliable List.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY

1. New article 5 (sections 17050–17062) and section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17051. Board Agreement for Contract, Grant or Loan.

(a) The Board shall not award a contract or grant, or approve a loan to any person or entity on the Unreliable List, for up to three years from the date of placement on the Unreliable List.

(b) This prohibition does not apply to Block Grants awarded pursuant to Public Resources Code section 48690.

(c) This prohibition does not apply when the contract, grant or loan is for the purpose of resolving the chronic violations which led to the person or entity's placement on the Unreliable List in accordance with section 17050(g).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY

1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17052. Board Agreement for Contract, Grant or Loan with Proposed Subcontractor.

The board shall not award a contract or grant or approve a loan with any person or entity who has proposed to enter into a subcontract with any person or entity who would provide services for the main agreement, if that person or entity is on the Unreliable List, for up to three years from the date of placement on the Unreliable List.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY

1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17053. Board Subcontractors.

The board shall not give approval for a contractor, grantee or borrower to enter into a subcontract with any person or entity who provides services for the main agreement, if that person or entity is on the Unreliable List, for up to three years from the date of placement on the Unreliable List.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY

1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17054. Executive Director Finding.

(a) The Executive Director may make a proposed finding of unreliability based on the occurrence of any event in Section 17050. The proposed finding may be made at any time within 3 years after Board staff discover that one or more of the events in Section 17050 may have occurred.

(b) In making such a finding, the Executive Director shall take into consideration mitigating factors which indicate that the person or entity is in fact reliable. These factors shall include, but are not limited to the following:

(1) Whether the violation, breach, or unlawful act was serious or material;

(2) The presence or absence of any intention to conceal, deceive, or mislead;

(3) Whether the violation, breach, or unlawful act was deliberate, negligent, or inadvertent;

(4) Whether the violation, breach, or unlawful act was an isolated occurrence, had happened previously, or is part of a pattern and practice;

(5) Whether the person or entity cooperated with local, state or federal authorities or took remedial action to correct, address, or prevent a future violation, breach, or unlawful act.

(6) The degree to which restitution, or other compensation, has been paid.

(c) After the Executive Director has made a proposed finding of unreliability, the Executive Director shall notify the person or entity of the proposed finding by certified or registered mail.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY

1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17055. Appeal to Board.

A person or entity who wishes to appeal the Executive Director's proposed finding of unreliability may, within 30 calendar days from the date notification was sent, submit to the Executive Director a written request for an appeal hearing before the board. The request shall state the grounds on which appeal is requested, including the factual and legal argument and supporting authorities.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17056. Final Finding.

(a) If the Executive Director does not receive a request for appeal within 30 calendar days from the date notice of the proposed finding was sent, the finding shall become final, and the person or entity shall be added to the Unreliable List.

(b) If a person or entity appeals the proposed finding, but withdraws the appeal or fails to attend the scheduled hearing, the proposed finding shall become final upon withdrawal of the appeal or failure to attend the hearing, and the person or entity shall be added to the Unreliable List.

(c) If a person or entity appeals the proposed finding of unreliability and the board upholds the Executive Director's finding, the proposed finding shall become final and the person or entity shall be added to the Unreliable List.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17057. Hearing.

The appeal to the board will be heard at a board meeting according to the following guidelines. The board has the right to augment these guidelines with specific time frames and procedures to fit within the board's agenda deadlines and meeting format. The appellant may request that the hearing be conducted in closed session to the extent authorized by law and shall indicate the basis for such a request.

(a) The board shall schedule a hearing within 60 days from the appellant's request for hearing.

(b) Prior to the hearing, board staff will inform appellant of the date for the hearing and provide a copy of the agenda item. The appellant's request for appeal will be included in the agenda item. Appellant may submit additional information for consideration at the board meeting.

(c) The hearing need not be conducted according to the technical rules relating to civil procedure, evidence and witnesses which would apply in a court of law.

(d) The hearing shall not be governed by the Administrative Procedure Act, Government Code sections 11340 et. seq.

(e) The Chairman of the Board may limit evidence and presentations to the issues relevant to the appeal.

(f) There may be a presentation by board staff and/or attorneys and a presentation by appellant and/or its attorneys.

(g) Oral testimony offered by any witness shall be under oath.

(h) The attorneys for the board and appellant shall not cross examine each other's witnesses.

(i) Rebuttal testimony may be offered.

(j) After considering all presentations and evidence, the board shall vote to uphold or overturn the proposed finding of unreliability made by the Executive Director. A vote to uphold the finding means that the appellant will be added to the Unreliable List for up to three years from the date of the board meeting. A vote to overturn the Executive Director's finding means that the appellant will not be added to the Unreliable List. In the case of a tie vote, the appellant shall not be added to the Unreliable List.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17058. Reconsideration of Placement on Unreliable List.

At any time after eighteen months and prior to three years since placement on the Unreliable List, a person or entity may submit a written request to the Executive Director requesting that the final finding of unreliability be vacated. This request may be submitted once only during the three year term of the Unreliable List. The Executive Director will reconsider the finding of unreliability based on the evidence submitted in the request. If the Executive Director finds that there is sufficient evidence to deem the person or entity reliable, they will be removed from the list. If there is not sufficient evidence to deem the person or entity reliable, then placement on the Unreliable List remains to the end of the three–year term.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17059. Pending Award.

When an appeal hearing has been requested, if there is a pending award or approval of a contract, subcontract, grant or loan, and if appellant can show that it is otherwise entitled to the award or approval, the agreement shall not be awarded or approved until such time as the appeal has been heard and the proposed finding of unreliability has become final or vacated. This section is not intended to affect existing contracts, grants, or loans.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17060. Declaration.

All applicants for board contracts, subcontracts, grants and loans shall submit to the board and all subcontractors shall submit to the prime contractor who will submit to the Board, a declaration under penalty of perjury stating that none of the events in Section 17050 have occurred with respect to the applicant, or subcontractor, within the preceding three years.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

§ 17062. Existing Law.

Placement of a person or entity on the Unreliable List is not intended to limit the Board's ability to seek additional redress or take corrective action as may be allowed by law due to the occurrence of an event listed in section 17050.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40505, 41956, 42010(c), 42846(a) and (b), 42872, 42882, 43230, 45000(c), 47200(a), 48021(b), 48100, 48101, 48631, 48632, 48643, 48655 and 48690, Public Resources Code; and Section 12166, Public Contracts Code.

HISTORY
1. New section filed 1–7–2000; operative 2–6–2000 (Register 2000, No. 1).

Chapter 2. Planning Guidelines and Procedures for Preparing, Revising and Amending County Solid Waste Management Plans

Article 1. Authority

§ 17100. Authority.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY
1. Repealer of Chapter 2 (sections 17100–17179, not consecutive) and new chapter 2 (sections 17100–17165, not consecutive) filed 11–9–78; effective thirtieth day thereafter (Register 78, No. 45). For former history, see Registers 76, No. 15; 76, No. 5; 75, No. 50; 75, No. 23; 74, No. 18.

2. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 2. Purpose and Intent

§ 17105. Purpose.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17106. Intent.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 3. Definitions

§ 17110. General.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17111. Agency.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17112. Amendment.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

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§ 17113. Board.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17114. Implementation.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17115. Plan.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17116. Planning Periods.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17117. Region.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17118. Regional Issues.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17119. Regional Planning Agency.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17120. Report.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17121. Resource Recovery.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17122. Revision.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17123. Solid Waste.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17124. Solid Waste Management.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 4. Compliance and Compatibility

§ 17125. Compliance with the California Environmental Quality Act (CEQA).

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17126. Compatibility of the Plan.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 5. Responsibility

§ 17127. Planning Responsibility.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17128. Planning Liaison.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 6. Contents of the Plan

§ 17129. General.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17130. Objectives and Measures to Achieve Objectives.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17131. Identification of Solid Wastes.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17132. Storage of Wastes for Collection.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17133. Collection System.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17134. Disposal and Processing of Wastes.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17135. Resource Recovery.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17136. Plan Administration.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17137. Economic Feasibility.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17138. Enforcement Program.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17139. Implementation of the Plan.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 7. Procedures for Preparing and Revising Plans

§ 17140. Plan Preparation.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17141. Revision Preparation.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17142. Participation.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17143. Informing the Public.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17144. Public Hearings or Meetings.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17145. Submittal of Preliminary Draft to Cities.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17146. Submittal of Final Draft to Cities.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17147. Approval by Cities of Plans and Revisions.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17148. Submittal of the Preliminary Draft to the Regional Agency.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17149. Submittal of the Final Draft to the Regional Agency.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17150. Approval by the County.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17151. Submittal of Preliminary Draft to the Board.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17152. Submittal of Final Plan to the Board.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17153. Approval by the Board.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17154. Resubmission of Deficient Plan.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 8. Procedures for Amending Plans

§ 17155. Preparing Amendments.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17156. Participation.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17157. Informing the Public.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17158. Public Hearings or Meetings.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17159. Regional Agency Review.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17160. City Approval of Amendments.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17161. Approval by the County.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17162. Submittal to Board for Preliminary Review.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17163. Submittal to Board for Approval.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17164. Approval by Board.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17165. Resubmission of Deficient Amendment.

NOTE: Authority cited: Sections 66783 and 66790, Government Code. Reference: Sections 66780 and 66780.5, Government Code.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Chapter 3. Minimum Standards for Solid Waste Handling and Disposal

Article 1. General

§ 17200. Authority.

The regulations contained herein are promulgated pursuant to Public Resources Code (PRC) sections 43020 and 43021 and Health and Safety Code section 4520. No provision in chapter 3 shall be construed as a limitation or restriction upon the board's right to exercise discretion which is vested in it by law. Nor shall any provision be construed to limit or re-

strict counties and cities from promulgating enactments which are as strict as or stricter than the regulations contained in this chapter. However, no city or county may promulgate enactments which are inconsistent with the provisions of this chapter. Any reference in this chapter to an enforcement agency shall be deemed to mean the enforcement agency created pursuant to Public Resources Code sections 43200 – 43219.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 11125, Government Code; Sections 43020–43021, Public Resources Code.

HISTORY

1. New chapter 3 (articles 1–7, sections 17200–17751, not consecutive) filed 5–1–75; effective thirtieth day thereafter (Register 75, No. 18).
2. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 17201. Compliance with Laws and Regulations.

Nothing in these standards shall be construed as relieving an owner, operator, or designer from the obligation of obtaining all required permits, licenses, or other clearances, and complying with all orders, laws, regulations, or other requirements of other approval, regulatory or enforcement agencies, such as, but not limited to, the Department, local health entities, water and air quality control boards, local land use authorities, fire authorities, etc.

Article 2. Purpose and Intent

§ 17202. Purpose.

The purpose of these regulations is to promote the health, safety and welfare of the people of the State of California, and to protect the environment by establishing minimum standards for the handling of solid wastes.

HISTORY

1. Amendment filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17203. Intent.

By adopting these standards, the board hereby sets forth performance standards for solid waste handling activities which are of state concern, as required by Public Resources Code section 43021, and sets forth minimum substantive requirements for operators' submission of information concerning individual solid waste facilities.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40000, 40001 and 40002, Public Resources Code.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Amendment filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17204. Intent of Standards.

These standards are intended to describe required levels of performance rather than detailed requirements. Wherever possible, operators and designers will be permitted flexibility in meeting the objectives set by the standards. Where the term "adequate" or the phrase "as approved by the enforcement agency" is used, the operator will usually propose a method, physical improvement, or other appropriate means to comply with a standard. The enforcement agency may thereupon accept, modify, reject, or replace the operator's proposal, and shall incorporate the means of compliance into the operator's permit, if applicable and appropriate.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17205. Health Related Standards.

These regulations contain both Health related standards and standards related to Solid Waste Management. The Health Standards are designated by the letter "H." When a Solid Waste Management Standard also is included in a section, it is identified by the letters "SWM." In all other cases the standards are Solid Waste Management Standards.

§ 17206. Waivers.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

Article 3. Emergency Waiver of Standards

§ 17210. Scope and Applicability.

(a) This Article informs an operator who holds a valid solid waste facilities permit of the process for applying for an emergency waiver of standards (waiver) in the event of a state of emergency or local emergency. The waiver grants an operator temporary relief from specific standards imposed by this Division or specific terms or conditions of a solid waste facilities permit issued pursuant to this Division. This Article implements and makes specific those provisions of Section 43035 of the Public Resources Code relating to the integrated waste management disaster plan.

(b) This Article is not intended to limit the authority of the state or a local agency during a disaster or emergency.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40001, 40002, 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021 of the Public Resources Code.

HISTORY

1. New article 3 (sections 17210–17210.9) and section filed 8–21–96; operative 9–20–96 (Register 96, No. 34). For prior history see Register 78, No. 8.

§ 17210.1. Definitions.

(a) "Agency" means the local agency responsible for compiling the disposal information from haulers and operators. The county is the agency, unless a region is given the responsibility as part of a regional agreement.

(b) "Board" means the California Integrated Waste Management Board.

(c) "Disaster" means a natural catastrophe such an an earthquake, fire, flood, landslide, or volcanic eruption, or, regardless of cause, any explosion, fire, or flood.

(d) "Disaster Debris" means nonhazardous solid waste caused by or directly related to a disaster.

(e) "Diversion" means the directing of solid waste from disposal or transformation by means of recycling, reuse, or composting.

(f) "Emergency Waiver of Standards" means the document signifying approval by an enforcement agency which allows an operator, who holds a valid solid waste facilities permit, the ability to deviate from specified state minimum solid waste standards or terms or conditions of a solid waste facilities permit issued pursuant to this Division. The waiver applies to the origin of waste; the rate of inflow for storage, transfer, or disposal of waste; the type and moisture content of solid waste; the hours of facility operation; and the storage time before the transfer or disposal of wastes, at a solid waste facility. This includes the establishment of a locally–approved temporary transfer or processing site, if authorized by the enforcement agency.

(g) "Enforcement Agency" means the agency designated pursuant to the requirements set forth in Public Resources Code, sections 43200 through 43221, or the Executive Director of the Board in the event that the enforcement agency (EA) is incapable of responding due to the nature of the emergency.

(h) "Extent Feasible" is evidenced by the use of maximum efforts to recycle, reuse, or otherwise divert from disposal as much of the debris and other nonhazardous waste received by the solid waste facility as possible, as determined by the operator.

(i) "Jurisdiction of Origin" means the incorporated city or the unincorporated area of the country where the waste originated.

(j) "Local Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, as described in Government Code section 8558(c), which conditions are likely

to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, as stated in the proclamation by the governing body of a county, city and county, or city, or by an official so designated by ordinance adopted by such governing body to issue such proclamation.

(k) "State of Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state, as described in Government Code section 8558(b), which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city, and require the combined forces of a mutual aid region or regions to combat, as stated in a proclamation by the Governor.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.2. Purpose and Limitations of an Emergency Waiver.

(a) An emergency waiver may only be issued when there has been a proclamation of a state of emergency or local emergency, as those terms are defined in this Article.

(b) An EA may approve and issue a waiver for the express purpose of enabling an operator of an existing permitted solid waste facility, a locally–approved temporary transfer or processing site, or a locally–approved temporary compostable material handling activity, to accept disaster debris and other nonhazardous wastes, in a manner not consistent with the terms and conditions of the relevant solid waste facilities permit or applicable state minimum standards, during the recovery phase of a state of emergency or local emergency.

(c) The waiver may apply to specified state minimum solid waste standards or a specific term or condition of a solid waste facilities permit at an existing solid waste facility, a locally–approved temporary transfer or processing site, or a locally–approved temporary compostable material handling activity, which are related to the following: the origin of waste; the rate of inflow for storage, transfer, processing, or disposal of waste; the type and moisture content of solid waste; the hours of facility operation; and the storage time before transfer, processing, or disposal of nonhazardous waste.

(d) The effective period of an initial waiver, once granted by the EA, shall not exceed 120 days. Upon receipt of the reports required in section 17210.5, the EA may extend the effective period of a waiver, as necessary, to assist in the recovery from an emergency.

(e) All other state minimum standards and permit conditions which are not the subject of the waiver shall remain in effect.

(f) A waiver may be modified, canceled, or revoked by the EA without advance notice should the EA determine that any of the following occurs:

(1) The use of such a waiver will cause or contribute to a public health and safety or environmental problem;

(2) The terms of the waiver are not being used expressly to handle the state of emergency or local emergency and are not in the best interest of the public health and safety;

(3) The waiver is no longer necessary;

(4) The solid waste facility operator is not utilizing disaster debris diversion programs to the extent feasible.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 43002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).
2. Amendment of subsections (a)–(c) filed 6–18–2007 as an emergency; operative 6–18–2007 (Register 2007, No. 25). A Certificate of Compliance must be transmitted to OAL by 12–17–2007 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a)–(c) refiled 12–17–2007 as an emergency; operative 12–17–2007 (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL by 3–17–2008 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–17–2007 order transmitted to OAL 3–13–2008 and filed 4–25–2008 (Register 2008, No. 17).

§ 17210.3. Request for an Emergency Waiver.

(a) An operator may apply to an EA for a waiver after a disaster or emergency situation as defined in this Article, has been declared. The waiver shall only be granted with the express approval of the EA following a proclamation of emergency or declaration of disaster at the local or state levels.

(b) To obtain a waiver, a solid waste facility operator shall submit a written request to the EA. The request for a waiver shall include, but not be limited to, the following information:

(1) A listing of the existing solid waste facilities permit terms and conditions to be waived in order to facilitate recovery and disposal of disaster debris in the event of a declared disaster or emergency;

(2) A statement of the remaining disposal capacity of the solid waste disposal facility at the time of the request;

(3) A description of all facility–related diversion programs and on–site recycling facilities; and

(4) A listing of locally–approved temporary transfer or processing sites to be used to store disaster debris for future reuse or recycling.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40001, 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.4. Granting an Emergency Waiver.

(a) The EA may grant a waiver during the proclamation of emergency upon making the following findings:

(1) If the waiver is for an existing permitted solid waste facility the operator applying for the waiver holds a valid solid waste facilities permit;

(2) The waiver will not pose a threat to public health and safety or the environment;

(3) The operator identifies and implements, the the extent feasible, diversion programs to maximize diversion through reuse, recycling, or composting of disaster–related waste.

(b) Within 7 days of receipt of the solid waste facility operator's request for a waiver, the EA shall notify the solid waste facility operator in writing whether or not the request for waiver has been granted. If the proposed waiver is not granted, the EA's notification shall contain reasons for the denial. The solid waste facility operator may reapply for the waiver at a later date or submit necessary documentation to receive the waiver immediately.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).
2. Amendment of subsection (a)(1) filed 6–18–2007 as an emergency; operative 6–18–2007 (Register 2007, No. 25). A Certificate of Compliance must be transmitted to OAL by 12–17–2007 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a)(1) refiled 12–17–2007 as an emergency; operative 12–17–2007 (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL by 3–17–2008 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–17–2007 order transmitted to OAL 3–13–2008 and filed 4–25–2008 (Register 2008, No. 17).

§ 17210.5. Reporting Requirements for a Solid Waste Facility Operator.

(a) The solid waste facility operator shall submit a written report to the EA and the local county agency (agency) within 90 days of activation of the waiver and every 90 days thereafter for the effective period of the activated waiver.

(b) The written report shall include the following information:

(1) The daily amount of disaster debris received, diverted, and disposed at the facility;

(2) The jurisdiction of origin for the disaster debris received at the facility;

(3) The increase in tonnage or volume of waste received per day during the effective period of the activated waiver; and

(4) The facilities used to process the disaster debris.

(c) If pursuant to section 17210.2(d) of this Article, the waiver is extended beyond 120 days, the operator shall submit a report, as described in subparagraph (b), to the EA and agency. The report shall be submitted once every 90 days until the end of the effective period of the waiver.

(d) After the activated waiver expires, the solid waste facility operator shall continue to submit the information requested in item (b) above to any EA and agency, every 90 days, until there is no longer any discernable disaster related waste being processed or stored at the facility.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.6. Reporting Requirements for an Enforcement Agency.

(a) The EA shall transmit a copy of the approved waiver to the Board within 15 days of its issuance.

(b) The EA shall submit a copy of the operator's written reports to the board within 30 days of the receipt of the reports.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.7. Selection of a Solid Waste Facility for Emergency Disposal and Diversion.

(a) In the event of a state emergency or local emergency, the EA shall do the following:

(1) Assist a local government within its jurisdiction by providing a list of solid waste disposal facilities which have been granted a waiver. The list shall include site capacity for acceptance of waste, hours of operation, daily tonnage limits during the emergency, and on–site recycling and diversion for disaster–related debris.

(2) Survey the solid waste facilities within its jurisdiction and determine the diversion programs available at the facilities. Diversion information will be made available by the EA to an affected local jurisdiction and to the public during a declared emergency.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.8. Authority of an Enforcement Agency.

(a) An EA may approve waivers of minimum standards and specific terms or conditions of a solid waste facilities permit, as needed, to respond to a disaster or emergency situation, as defined in section 17210.1.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40001, 40002, 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

§ 17210.9. Executive Director's Powers and Duties Relative to the Emergency Waiver.

(a) Once the waiver is issued, the Executive Director of the Board shall review all EA waiver approvals. The Executive Director may condition, limit, suspend, or terminate an operator's use of a waiver, if it is determined that use of the waiver would cause harm to public health and safety, or the environment.

(b) The Executive Director may condition, limit, suspend, or terminate an operator's use of a waiver if it is found that the operator has not utilized reasonably available waste diversion programs as identified in its waiver documentation.

(c) The Executive Director shall report to the Board at a regularly scheduled meeting any granting of a waiver, and all determinations made concerning the waiver.

NOTE: Authority cited: Sections 40502 and 43035, Public Resources Code. Reference: Sections 40002, 43020, 43021 and 43035, Public Resources Code.

HISTORY

1. New section filed 8–21–96; operative 9–20–96 (Register 96, No. 34).

Article 3.5. Temporary Waiver of Terms

§ 17211. Scope and Applicability.

(a) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (the Act), commencing at Section 40000 of the Public Resources Code, as amended. These Regulations should be read together with the Act.

(b) The purpose of this Article is to provide a means for an enforcement agency (EA) to authorize a temporary waiver from specific terms and conditions of a solid waste facilities permit for a limited period during a temporary emergency as defined in Section 17211.1(b). This Article does not authorize relief from requirements of State Minimum Standards, set out in Title 14, California Code of Regulations, Chapter 3, or other standard or requirement adopted by the Board.

(c) Pursuant to this Article, an Enforcement Agency (EA) may issue a stipulated agreement defined in Section 17211.1(a) that provides a temporary waiver of specific terms and conditions of a solid waste facilities permit during a temporary emergency.

(d) This article informs an operator, who holds a valid solid waste facilities permit, of the process for requesting a stipulated agreement in the event of an temporary emergency.

(e) This Article is not intended to limit the authority of the state or a local agency, including the EA or the Board to enforce the terms and conditions of a solid waste facilities permit that are not subject to the stipulated agreement, State Minimum Standards, and provisions of the Act.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New article 3.5 (sections 17211–17211.9) and section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New article 3.5 (sections 17211–17211.9) and section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New article 3.5 (sections 17211–17211.9) and section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New article 3.5 (sections 17211–17211.9) and section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).

§ 17211.1. Definitions.

In addition to the definitions set forth in Section 17210.1 of Article 3, of this Chapter, the following definitions apply to this Article 3.5:

(a) "Stipulated agreement" means an enforceable document written by the EA, pursuant to Division 30, Public Resources Code, Section 45011(a), that provides a temporary waiver of specified terms and conditions of a solid waste facilities permit issued to an operator pursuant to this Division. The stipulated agreement is subject to appeal through the appeal process set out in Division 30, Public Resources Code, Parts 5 and 6.

(b) "Temporary emergency" means a temporary, unforeseeable circumstance, which results in a situation where it is necessary, in order to protect the public health and safety or the environment as determined by the EA, to waive specified terms and conditions of a solid waste facilities permit. "Temporary emergency" does not include competitive market changes or a failure on the part of the operator, the EA or a local government agency to plan for reasonably foreseeable future events. Further,

because they are not unforeseeable, circumstances resulting from a labor controversy arising from issues at one or more solid waste facilities are not a "temporary emergency" with respect to the facility or facilities at which the labor controversy occurs.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a) and Division 30, Parts 5 and 6, Public Resources Code.

HISTORY

1. New section filed 11-1-2001 as an emergency; operative 11-1-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-1-2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3-4-2002 as an emergency; operative 3-2-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-1-2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6-20-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10-24-2002 as an emergency; operative 11-1-2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3-3-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-2002 order transmitted to OAL 2-21-2003 and filed 4-4-2003 (Register 2003, No. 14).
7. Amendment filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).

§ 17211.2. Purpose and Limitation of a Stipulated Agreement.

(a) A stipulated agreement may only be used in the event of a temporary emergency.

(b) A stipulated agreement may only be used when the EA and operator agree that the circumstance contributing to the temporary emergency was unforeseeable.

(c) An EA may use a stipulated agreement for the express purpose of enabling an operator of an existing permitted solid waste facility to operate in a manner not consistent with the terms and conditions of the solid waste facilities permit.

(d) The operator must comply with the terms and conditions of the solid waste facilities permit until such time as a stipulated agreement is provided by the EA.

(e) The term of the stipulated agreement once granted by the EA, shall not exceed 90 days. The EA may grant one or more extensions of 90 days or less as allowed in Section 17211.6.

(f) All permit terms and conditions, which are not the subject of the stipulated agreement, shall remain in effect.

(g) A stipulated agreement may be modified; cancelled, or revoked by the EA without advance notice should the EA determine that any of the following occurs:

(1) The use of the stipulated agreement causes or contributes to, or threatens to cause or contribute to, harm to the public health and safety or the environment;

(2) The terms of the stipulated agreement are not being used expressly to handle a temporary emergency and are not in the best interest of the public health and safety or the environment;

(3) The solid waste facilities permit has been revised to include terms and conditions that address the temporary emergency.

(4) The temporary emergency no longer exists (so the stipulated agreement is no longer necessary).

(h) A stipulated agreement shall be cancelled or revoked by the EA without advance notice should the EA determine that the operator is not in compliance with the time frames and requirements included in the stipulated agreement under Section 17211.5(c) and (d).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11-1-2001 as an emergency; operative 11-1-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-1-2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3-4-2002 as an emergency; operative 3-2-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-1-2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6-20-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10-24-2002 as an emergency; operative 11-1-2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3-3-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-2002 order transmitted to OAL 2-21-2003 and filed 4-4-2003 (Register 2003, No. 14).

§ 17211.3. Request for a Temporary Stipulated Agreement.

(a) An operator may make a request to an EA for a stipulated agreement.

(b) To obtain a stipulated agreement, the operator shall submit a written request to the EA. The request for the stipulated agreement shall include the following information:

(1) A description of the temporary emergency, including a description of how the circumstance was unforeseeable, which justifies a waiver.

(2) The specific changes in operation or design at the facility required to address the temporary emergency.

(3) The specific terms and conditions of the facility's existing solid waste facilities permit from which the operator is requesting a waiver.

(4) A requested date to begin implementation of the stipulated agreement.

(5) Actions the operator will take so the stipulated agreement is no longer needed including milestones and associated timelines with specific dates.

(6) Evidence acceptable to the EA that the operation of the facility under a stipulated agreement is compliant with all applicable land use entitlements, all other permits affecting the facility, all applicable federal, state, and local laws and regulations, and the California Environmental Quality Act.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11-1-2001 as an emergency; operative 11-1-2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-1-2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3-4-2002 as an emergency; operative 3-2-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-1-2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6-20-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10-24-2002 as an emergency; operative 11-1-2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3-3-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-24-2002 order transmitted to OAL 2-21-2003 and filed 4-4-2003 (Register 2003, No. 14).

§ 17211.4. Issuing a Stipulated Agreement.

(a) The EA may issue a stipulated agreement upon making the following determinations:

(1) A temporary emergency exists.

(2) The operator requesting a stipulated agreement holds a valid solid waste facilities permit for the facility.

(3) The operator is in compliance and has demonstrated good faith in maintaining compliance with state minimum standards and the terms and conditions of the existing solid waste facilities permit.

(4) It is necessary to waive specified terms and conditions of a solid waste facilities permit in order to protect the public health and safety or the environment.

(5) Operation under the stipulated agreement will not pose a threat to public health and safety or the environment.

(6) Any restrictions, conditions, or terms contained in the stipulated agreement have been agreed upon by the EA and the operator.

(7) A stipulated agreement may not be used for a recurring temporary emergency addressed by a previous stipulated agreement.

(b) Within 5 working days of receipt of the operator's request for a stipulated agreement, the EA shall notify the operator in writing whether or not the request for a stipulated agreement has been granted. If the proposed stipulated agreement is not granted, the EA's notification shall contain reasons for the denial. The solid waste facility operator may again request the stipulated agreement at a later date or submit necessary documentation to receive the stipulated agreement.

(c) If a stipulated agreement is not requested or a request is denied, the EA may address the changes required to address the temporary emergency through the processes and mechanisms included in Chapter 5, Article 4.

(d) In the event the Executive Director conditions, limits, suspends, or terminates an operator's use of a stipulated agreement pursuant to Section 17211.9(a), the EA shall not find that an operator has violated any of the specific terms and conditions waived by the stipulated agreement for a violation occurring during the period between the EA's written approval of the stipulated agreement and the effective date of the Executive Director's action under Section 17211.9(a) when the Executive Director's action has the effect of setting aside or limiting the waiver of any such specific terms and conditions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).
7. New subsections (a)(1) and (a)(4), subsection renumbering and new subsection (d) filed 2–28–2008; operative 3–29–2008 (Register 2008, No. 9).

§ 17211.5. Contents of a Stipulated Agreement.

Contents of a stipulated agreement are as follows, but not limited to:

(a) Specific terms and conditions of the solid waste facilities permit that are subject to the stipulated agreement.

(b) Justification for providing the stipulated agreement, including evidence supporting the finding made by the EA.

(c) The specific changes in operation or design at the facility required to address the temporary emergency.

(d) Term of the stipulated agreement, including commencement date, termination date and whether request for one or more extensions will be entertained under appropriate and specified circumstances.

(e) Actions the operator will take including milestones and associated timelines with specific dates to revise its solid waste facilities permit or to modify its operations so that the facility will no longer need the stipulated agreement.

(f) Actions the EA will take if applicable to assist the operator to revise its solid waste facilities permit or to modify its operations or design so that the facility will no longer require the stipulated agreement.

(g) Evidence, demonstrated through the signatures of both the operator and the EA, that the operator and EA have agreed to the requirements set out in the stipulated agreement.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).

§ 17211.6. Reporting Requirements for a Solid Waste Facility Operator

(a) The solid waste facility operator shall submit a written report to the EA within10 days prior to the termination date of the stipulated agreement.

(b) The written report shall include:

(1) Information regarding changes in operation or design that took place as a result of the stipulated agreement.

(2) Description of steps taken to find a longer term and/or permanent solution to address the unforeseeable circumstance.

(3) Either a request to discontinue the stipulated agreement on a date certain, or a request to continue the stipulated agreement for another 90 days.

(c) If the stipulated agreement is extended beyond the initial 90 days, the operator shall submit a subsequent report, as described in subparagraph (b), to the EA. The report shall be submitted once every 10 days prior to the termination date of each extension of the stipulated agreement.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).

§ 17211.7. Reporting Requirements for an Enforcement Agency.

(a) The EA shall transmit a copy of the stipulated agreement request and stipulated agreement to the Board within 5 working days of it being granted.

(1) The transmitted stipulated agreement will be accompanied by supporting written documentation of the information by which the LEA made the determinations required in Section 17211.4(a).

(b) The EA shall transmit a copy of the stipulated agreement request and verification of denial to the Board within 5 working days of the stipulated agreement denial.

(1) The transmitted stipulated agreement will be accompanied by supporting written documentation of the information by which the LEA made the determinations required in Section 17211.4(b).

(c) The EA shall transmit a copy of verification of an extension of a stipulated agreement to the Board with in 5 working days of it being granted.

(d) The EA shall submit a copy of the operator's written reports to the Board within 5 working days of the receipt of the reports.

(e) The EA shall provide an oral report to the Board during the next regularly scheduled meeting after an extension of a stipulated agreement.

(f) Within 24 hours following the EA's issuance of a stipulated agreement, the EA shall submit a notice for publication in a daily newspaper of general circulation in the community in which the solid waste facility is located and shall submit a notice to the Board to be posted on the Board's web page.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).
7. New subsections (a)(1) and (b)(1) filed 2–28–2008; operative 3–29–2008 (Register 2008, No. 9).

§ 17211.8. Authority of an Enforcement Agency.

(a) An EA may approve a waiver through a stipulated agreement addressing specific terms or conditions of a solid waste facilities permit, as needed, to respond to a temporary emergency, as defined in Section 17211.1.

(b) For reasons noted in Section 17211.2(g) the EA may cancel or revoke a stipulated agreement and choose to address the situation through mechanisms found in Chapter 5, Article 4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).

§ 17211.9. Board Review of Stipulated Agreements.

(a) Once a stipulated agreement is issued and the EA has provided a copy to the Board pursuant to Section 17211.7(a), the Executive Director of the Board shall review all EA approvals. The Executive Director may, after consulting with the EA, condition, limit, suspend, or terminate an operator's use of a stipulated agreement if he or she finds that implementation of the agreement as issued is not consistent with Section 17211.4 or may adversely affect public health and safety, or the environment.

(b) The Executive Director shall report to the Board at the next regularly scheduled meeting any issuance of a stipulated agreement, denial of a stipulated agreement, extension of a stipulated agreement, or any other action taken by an EA pursuant to this Article and shall report any action taken by the Executive Director to condition, limit, suspend or terminate a stipulated agreement, including the basis on which the Executive Director took such action.

(c) The Executive Director may delegate his or her duties under this section to any employee of the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 45011(a), Public Resources Code.

HISTORY

1. New section filed 11–1–2001 as an emergency; operative 11–1–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 3–1–2002 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 10).
3. New section filed 3–4–2002 as an emergency; operative 3–2–2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–1–2002 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 6–20–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 10–24–2002 as an emergency; operative 11–1–2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 3–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–2002 order transmitted to OAL 2–21–2003 and filed 4–4–2003 (Register 2003, No. 14).
7. Amendment filed 2–28–2008; operative 3–29–2008 (Register 2008, No. 9).

Article 4. Definitions

§ 17225. General.

(a) Unless the context requires another construction, the definitions set forth in this article and in Division 30 of the Public Resources Code shall govern the construction of this chapter. No definitions which are present in Division 30 of the Public Resources Code are repeated herein. Consequently, those definitions should be read in conjunction with the ones set forth herein.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40000, 40001 and 40002, Public Resources Code; Title 40, Code of Federal Regulations, Section 258.2.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

3. Amendment of section and NOTE filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
6. Repealer of subsection (b) filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.1. Abandoned Vehicles.

"Abandoned Vehicles" includes vehicles, with or without motor power, including cars, trucks, trailers, mobilehomes, buses, etc., left on public or private property for an extended period of time and usually in an inoperable or hazardous condition.

§ 17225.2. Active Face.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.3. Agricultural Solid Wastes.

"Agricultural Solid Wastes" include wastes resulting from the production and processing of farm or agricultural products, including manures, prunings and crop residues wherever produced.

§ 17225.4. Approval Agency.

"Approval Agency" includes any agency with regulatory powers regarding solid waste generation, collection, transportation, processing or disposal and includes, but is not limited to the Board, the Department, California Regional Water Quality Control Boards, local air pollution control districts, local enforcement agencies, local health entities and local land use authorities.

§ 17225.5. Ashes.

"Ashes" includes the residue from the combustion of any solid or liquid materials.

§ 17225.6. Baling.

"Baling" includes the process of compressing and binding solid wastes.

§ 17225.7. Board.

HISTORY

1. Change without regulatory effect repealing Section 17225.7 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).

§ 17225.8. Bulky Waste.

"Bulky Waste" includes large items of solid waste such as appliances, furniture, large auto parts, trees, branches, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

§ 17225.9. Cell.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.10. Collection.

"Collection" means the act of collecting solid waste at the place of waste generation by an approved collection agent (public or private) and is distinguished from "removal."

§ 17225.11. Combustible Refuse.

"Combustible Refuse" means any burnable refuse.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17225.12. Commercial Solid Wastes.

"Commercial Solid Wastes" include all types of solid wastes generated by stores, offices and other commercial sources, excluding residences, and excluding industrial wastes.

§ 17225.13. Collection Vehicle or Equipment.

"Collection Vehicle or Equipment" includes any vehicle or equipment used in the collection of residential refuse or commercial solid wastes.

§ 17225.14. Composting.

"Composting" includes a controlled microbial degradation of organic wastes yielding a safe and nuisance free product.

§ 17225.15. Construction and Demolition Wastes.

"Construction and Demolition Wastes" include the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

§ 17225.16. Cover Material.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.17. Daily Cover.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.18. Dead Animals.

"Dead Animals" include those animals whose carcasses require disposal.

§ 17225.19. Decomposition Gases.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.20. Department.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.21. Disposal Area.

"Disposal Area" means that portion of a disposal site which has received or is receiving solid wastes.

§ 17225.22. Disposal Site or Site.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.23. Disposal Site Owner.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.24. Dump.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.25. "EA." (CIWMB)

"EA" means enforcement agency as defined in PRC Section 40130.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40000, 40001, 40002, Public Resources Code; Title 40, Code of Federal Regulations, Section 258.2.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17225.26. Fill.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.27. Final Cover.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.28. Final Site Face.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.29. Flue.

"Flue" includes any duct or passage for air, gases, or the like, such as a stack or chimney.

§ 17225.30. Garbage.

"Garbage" includes all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs.

§ 17225.31. Groups of Wastes.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect repealing Section 17225.31 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).

§ 17225.32. Hazardous Wastes.

"Hazardous Wastes" include any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to humans, domestic animals, or wildlife, during, or as an approximate result of any disposal of such wastes or mixture of wastes as defined in Article 2, Chapter 6.5, Section 25117 of the Health and Safety Code. The terms "toxic," "corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code).

§ 17225.33. Incinerator.

"Incinerator" includes any equipment used for the volume reduction or destruction of combustible wastes by burning, from which the exhaust gases pass through a flue.

§ 17225.34. Incinerator Residue.

"Incinerator Residue" includes the solid materials remaining after reduction in an incinerator.

§ 17225.35. Industrial Wastes.

"Industrial Wastes" include all types of solid wastes and semi–solid wastes which result from industrial processes and manufacturing operations.

§ 17225.36. Infectious Wastes.

"Infectious Wastes" include:

(a) Equipment, instruments, utensils and other fomites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies;

(b) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients or laboratory animals) and disposable fomites (any substance that may harbor or transmit pathogenic organisms) attendant thereto;

(c) surgical operating room pathologic specimens—including recognizable anatomical parts, human tissue, anatomical human remains and disposable materials from hospitals, clinics, outpatient areas and emergency rooms, as is also defined in Section 314(d) of the California Administrative Code, Title 17.

§ 17225.37. Institutional Solid Wastes.

"Institutional Solid Wastes" include solid wastes originating from educational, health care, correctional, research facilities or other similar facilities.

§ 17225.38. Intermediate Cover.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.39. Landfill.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.40. Leachate.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

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§ 17225.41. Liquid Wastes.
"Liquid Wastes" means waste materials which are not spadeable.

§ 17225.42. Litter.
"Litter" means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.

HISTORY
1. Amendment filed 8–18–78; effective thirtieth day thereafter (Register 78, No. 33).

§ 17225.43. Local Government.
"Local Government" is a local public entity which is a county, city, district, or any other special political subdivision, but is not the State.

HISTORY
1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.44. Non–Combustible Refuse.
"Non–Combustible Refuse" includes miscellaneous refuse materials that are unburnable at ordinary incinerator temperatures (1300 to 2000 degrees F).

§ 17225.45. Nuisance.
"Nuisance" includes anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and affects at the same time an entire community or neighborhood or any considerable number of persons although the extent of annoyance or damage inflicted upon the individual may be unequal and which occurs as a result of the storage, removal, transport, processing or disposal of solid waste.

§ 17225.46. Open Burning.
HISTORY
1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.47. Operating Area.
HISTORY
1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.48. Operator.
HISTORY
1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.49. Person.
HISTORY
1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.50. Premises.
"Premises" includes a tract or parcel of land with or without habitable buildings or appurtenant structures.

§ 17225.51. Processing.
HISTORY
1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.52. Putrescible Wastes.
"Putrescible Wastes" include wastes that are capable of being decomposed by micro–organisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, offal and dead animals.

§ 17225.53. Refuse.
"Refuse" includes garbage and rubbish.

§ 17225.54. Recycling.
HISTORY
1. Repealer filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17225.55. Removal.
"Removal" means the act of taking solid wastes from the place of waste generation either by an approved collection agent or by a person in control of the premises.

§ 17225.56. Removal Frequency.
"Removal Frequency" means frequency of removal of solid wastes from the place of waste generation either by an approved collection agency or by the owner of the waste.

§ 17225.57. Residential Refuse.
"Residential Refuse" includes all types of domestic garbage and rubbish which originate in residential dwellings.

§ 17225.58. Resource Recovery.
"Resource Recovery" means the reclamation or salvage of wastes for reuse, conversion to energy or recycling.

§ 17225.59. Rubbish.
"Rubbish" includes non–putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber by–products or litter.

§ 17225.60. Runoff.
HISTORY
1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.61. Salvaging.
"Salvaging" means the controlled removal of waste material for utilization.

§ 17225.62. Sanitary Landfill.
HISTORY
1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17225.63. Scavenging.
"Scavenging" means the uncontrolled and/or unauthorized removal of solid waste materials.

§ 17225.64. Septic Tank Pumpings.
"Septic Tank Pumpings" include sludge and wastewater removed from septic tanks.

§ 17225.65. Sewage Sludge.
"Sewage Sludge" includes any residue, excluding grit or screenings, removed from a waste water, whether in a dry, semidry or liquid form.

§ 17225.66. Shredding.
"Shredding" includes a process of reducing the particle size of solid wastes through use of grinding, shredding, milling or rasping machines.

§ 17225.67. Sludge.
"Sludge" includes the accumulated solids and/or semisolids deposited from wastewaters or other fluids.

§ 17225.68. Small Volume Transfer Station.
HISTORY
1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17225.69. Solid Wastes or Wastes.
HISTORY
1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.70. Solid Waste Management.
"Solid Waste Management" includes a planned program for effectively controlling the generation, storage, collection, transportation, processing and reuse, conversion or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound and economical manner. It includes all administrative, financial, environmental, legal and planning functions as well as the operational aspects of solid waste handling, disposal and resource recovery systems necessary to achieve established objectives.

§ 17225.71. Street Refuse.

"Street Refuse" includes materials picked up by manual or mechanical sweeping of alleys, streets or sidewalks, litter from public litter receptacles and material removed from catch basins.

§ 17225.72. Transfer/Processing Station or Station.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17225.73. Vector.

"Vector" includes any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well being.

§ 17225.74. Written Approval.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

Article 4.1. Waste Tire Program Definitions

*The following definitions are to be used only for the purposes of Article 5.5 of this Chapter and Chapter 6 of this Division.

§ 17225.701. Altered Waste Tire.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including adoption of article heading and repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.705. Store.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.710. Applicant.

"Applicant" means any person seeking a permit to operate a waste tire facility.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42820, 42822, 42833, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.715. Baled Tires.

"Baled Tires" means either whole or altered waste tires that have been compressed and then secured with a binding material for the purpose of reducing their volume. Baled tires are waste tires as defined in PRC Section 42801.6, until fully enclosed or encapsulated in an engineered construction project for which all required local, state, and/or federal government approvals have been obtained. "Baling" in reference to waste tires means action which produces baled tires.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42801.6, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer and new section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.717. Collection.

Waste tires are considered in the "collection" process when they are temporarily placed in fully enclosed, licensed road transportable containers that are not stored at a permitted waste tire facility or a facility identified in Section 18420(a). The requirements of Article 5.5 of this Chapter and Chapter 6, with the exception of Article 8.5, Chapter 6, shall not apply to "collection" as long as the following conditions are met:

(1) Containers shall be kept closed except while loading and unloading.

(2) Containers shall be kept locked when not being loaded or unloaded unless unauthorized access is controlled pursuant to section 17352 of this Article.

(3) All waste tire deliveries shall be manifested in accordance with Article 8.5 of this Chapter.

(4) For the purpose of this section "temporarily" shall mean less than 90 days.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.720. Crumb Rubber.

Crumb rubber means rubber granules derived from waste tires that are less than or equal to one-quarter (1/4) inch (6mm) in size. "Crumbing" in reference to waste tires means action which produces crumb rubber.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42801.7, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.725. Design.

"Design" means the layout of a waste tire facility (including the numbers and types of fixed structures), total volumetric capacity of a waste tire facility or total throughput rate, vehicular traffic flow and patterns surrounding and within the facility, proposed contouring, and other factors that may be considered a part of the facility's physical configuration.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42812, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.735. Waste Tire.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42807, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.750. Operation.

"Operation" means the procedures, personnel, and equipment used to receive, store, process or dispose of waste tires.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42812, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.755. Operator.

"Operator" means the person legally responsible for the operation of a waste tire facility or the owner if there is no operator.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42804, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.760. Owner.

"Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which a waste tire facility is located.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42805, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.770. Passenger Tire Equivalents (PTE).

"Passenger Tire Equivalents" means the total weight of altered waste tires, in pounds, divided by 20 pounds. This definition replaces the previous definition of "Tire Equivalents."

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42808, 42821(c), 42831, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.795. Store.

"Store" means to reserve tires for future use, processing, recycling, or offsite disposal.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42822, 42808, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.800. Substantial Change.

For the purpose of PRC section 42812, "Substantial Change" means any change that may cause a significant effect on the environment. Significant effect on the environment shall have the same meaning as provided in the State California Environmental Quality Act (CEQA) Guidelines. The determination of significant effect shall be made in accordance with section 15064 of the State CEQA Guidelines (Title 14 of the California Code of Regulations).

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42812, 42820, 42830 and 43020, Public Resources Code; and Sections 15002, 15064 and 15382, State CEQA Guidelines, Title 14, CCR.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17225.820. Used Tire Dealer.

"Used Tire Dealer" means a business, operating under the terms and conditions of a local use permit, business license or other required local approval, which is storing used tires in accordance with PRC section 42806.5, and for which its primary purpose is to sell used tires for profit.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42800, 42806.5, 42820, 42830 and 43020, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 4.5. Implementation of Federal Municipal Solid Waste Landfill Minimum Standards

§ 17258.1. Purpose, Scope, and Applicability.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.1.

HISTORY

1. New article 4.5 (sections 17258.1–17258.74, not inclusive) filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New article 4.5 refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 with amendments and filed 4–19–94 (Register 94, No. 16).
4. Repealer of article 4.5 (sections 17258.1–17258.74) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to implementation of federal municipal solid waste landfill minimum standards have been relocated to title 27, division 2.

§ 17258.2. Definitions.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 257 and 258.2.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 with amendments of subsections (b) and (h) and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.10. Airport Safety.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.10.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.16. Closure of Existing Landfills.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 40508, Public Resources Code and Title 40, Code of Federal Regulations, Section 258.16.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.20. Procedures for Excluding the Receipt of Hazardous Waste.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 40508, Public Resources Code; Sections 25249.5 through 25249.13, Health and Safety Code; and Title 40, Code of Federal Regulations, Section 258.20.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.21. Cover Material Requirements.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Section 40508, 43020, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.21.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.23. Explosive Gases Control.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.23.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.24. Air Criteria.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.24.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.29. Recordkeeping Requirements.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.29.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.60. Closure Criteria.

NOTE: Authority cited: Sections 40502, 43020, 43021, 43030, 43501 and 43509, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.60.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17258.61. Postclosure Care Requirements.

NOTE: Authority cited: Sections 40502, 43020, 43021, 43030, 43501 and 43509, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.61.

HISTORY

1. New section filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 11-9-93 order transmitted to OAL 3-8-94 and filed 4-19-94 (Register 94, No. 16).
4. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 17258.73. Financial Assurance for Corrective Action.

NOTE: Authority cited: Sections 40502 and 40508, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.73.

HISTORY

1. New section filed 7-12-93 as an emergency; operative 7-12-93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11-9-93 as an emergency; operative 11-9-93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4-26-93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11-9-93 order transmitted to OAL 3-8-94 and filed 4-19-94 (Register 94, No. 16).
4. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 17258.74. Allowable Mechanisms for Corrective Action.

NOTE: Authority cited: Sections 40502 and 40508, Public Resources Code. Reference: Section 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.74.

HISTORY

1. New section filed 7-12-93 as an emergency; operative 7-12-93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11-9-93 as an emergency; operative 11-9-93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4-26-93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11-9-93 order transmitted to OAL 3-8-94 with amendment of subsections (a)(5), (b)(1), (c)(1), (d)(1), (i) and (k) and filed 4-19-94 (Register 94, No. 16).
4. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

Article 5. Solid Waste Storage and Removal Standards

GENERAL

§ 17301. Applicability of Standards.

The standards in this Article shall apply to all facilities, equipment, or vehicles used for storage, removal, transport, and other handling of solid wastes.

HISTORY

1. Amendment filed 2-21-78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17302. Conformance with Plan.

After the effective date of the county solid waste management plan required by Section 66780 of the Government Code, solid waste storage and removal shall be in conformance with said plan.

STORAGE OF SOLID WASTES

§ 17311. General.

The owner, operator and/or occupant of any premise, business establishment, industry, or other property, vacant or occupied, shall be responsible for the safe and sanitary storage of all solid waste accumulated on the property.

§ 17312. Storage.

(H) In all cases in which garbage and rubbish are combined, the standards for garbage shall prevail. The property owner or occupant shall store solid waste on his premises or property or shall require it to be stored or handled in such a manner so as not to promote the propagation, harborage, or attraction of vectors, or the creation of nuisances.

§ 17313. Design Requirements.

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which will accommodate the solid waste loading anticipated and which will allow for efficient and safe waste removal or collection. The design shall demonstrate to local land use and building permit issuing authorities that it includes the required provisions.

§ 17314. Operator Responsibility.

Where the collection operator furnishes storage containers, he is responsible for maintaining the containers in good condition (ordinary wear and tear excepted) unless they are furnished under other terms, conditions, or agreements. He shall plan with the property owner and/or occupant as to placement of storage containers to minimize traffic, aesthetic and other problems both on the property and for the general public.

§ 17315. Garbage Containers.

(H) Property owners and tenants shall deposit all garbage and putrescible matter or mixed garbage and rubbish in containers which are either non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and designed for safe handling, or in paper or plastic bags having sufficient strength and water tightness and which are designed for the containment of refuse. Containers for garbage and rubbish should be of an adequate size and in sufficient numbers to contain without overflowing, all the refuse that a household or other establishment generates within the designated removal period. Containers when filled shall not exceed reasonable lifting weights for an average physically fit individual except where mechanical loading systems are used. Containers shall be maintained in a clean, sound condition free from putrescible residue.

§ 17316. Identification of Containers.

Containers of one cubic yard or more owned by the collection service operator shall be identified with the name and telephone number of the agent servicing the container.

§ 17317. Use of Container.

No person shall tamper with, modify, remove from, or deposit solid wastes in any container which has not been provided for his use, without the permission of the container owner.

SOLID WASTE REMOVAL AND COLLECTION

§ 17331. Frequency of Refuse Removal.

(H) The owner or tenant of any premises, business establishment or industry shall be responsible for the satisfactory removal of all refuse accumulated by him on his property or his premises. To prevent propagation, harborage, or attraction of flies, rodents or other vectors and the creation of nuisances, refuse, except for inert materials, shall not be allowed to remain on the premises for more than seven days, except when:

(a) disruptions due to strikes occur, or

(b) severe weather conditions or "Acts of God" make collection impossible using normal collection equipment, or

(c) official holidays interrupt the normal seven day collection cycle in which case collection may be postponed until the next working day. Where it is deemed necessary by the local health officer because of the propagation of vectors and for the protection of public health, more frequent removal of refuse shall be required.

HISTORY

1. Amendment filed 7-25-78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17332. Regulation of Operators.

Each person providing residential, commercial, or industrial solid waste collection services shall comply with all local government licenses, permits or written approval requirements applicable to the city or county in which such services are provided. Such written approval shall be contingent upon the operator's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary. Each enforcement agency of solid waste collection shall maintain a complete listing of all persons holding written approvals to provide solid waste collection services within its jurisdiction. The listings shall contain the name, office, address, telephone number and emergency telephone number if different of each such person, the number and types of vehicles employed by such person in providing such solid waste collection services, and the types of materials authorized for handling.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17333. Operator Qualifications.

When a city, county or special district authorizes or designates a person or firm to provide solid waste collection services within the territory under its jurisdiction through contract, franchise, permit, or license the local government shall obtain proof that such person or firm has adequate financial resources and experience to properly conduct the operation authorized. The facts needed to establish proof shall include but not be limited to the following:

(a) The filing of a performance bond or equivalent security with the local government in a reasonable amount, together with

(b) Evidence submitted to the local government and to the enforcement agency that the person or firm has experience sufficient to meet the needs of the situation within the jurisdiction.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17334. Ownership of Waste Materials.

Solid wastes subject to collection by a collection service operator shall become the property of the collection service operator subject to local ordinances or contract conditions after such time as the authorized collector takes possession of the wastes.

COLLECTION AND TRANSPORTATION EQUIPMENT

§ 17341. Equipment Construction.

(H). All equipment used for the collection and/or transportation of solid waste shall be durable, easily cleanable and designed for safe handling, and constructed to prevent loss of wastes from the equipment during collection or transportation. If such equipment is used to collect or transport garbage, other wet or liquid producing wastes, or wastes composed of fine particles, such equipment shall in all cases be non–absorbent and leak resistant. All equipment shall be maintained in good condition and cleaned in a frequency and in a manner so as to prevent the propagation or attraction of flies, rodents, or other vectors and the creation of nuisances.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17342. Equipment Safety.

(H) Vehicles and equipment used in the transport of garbage and rubbish shall be constructed and maintained in such a manner as to minimize the health and safety hazards to collection personnel and the public.

§ 17343. Equipment Parking.

A refuse collection service operator must designate an off–street location where all refuse collection vehicles will be parked when not in service, except in an emergency.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

§ 17344. Identification of Operator.

Each vehicle used for the collection and transport of refuse shall be clearly marked with the name of the agency or firm operating the vehicle.

§ 17345. Inspection of Equipment.

(H) Equipment used for solid waste collection shall be made available for inspection as requested by the appropriate Enforcement Agency.

Article 5.4. Waste Tire Monofill Regulatory Requirements

§ 17346. Authority and Scope.

(a) This Article sets forth permitting requirements and minimum operating standards for facilities that operate a waste tire monofill as defined in Section 17346.1 of this Article.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (the Act) commencing with Section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(c) Nothing in this Article limits or restricts the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict cities or counties from promulgating laws which are at least as strict as the regulations contained in this Article. However, no city or county may promulgate laws which are inconsistent with the provisions of this Article.

(d) Nothing in this Article shall be construed as relieving any owner or operator from obtaining all required permits, licenses, or other clearances complying with all orders, laws, regulations, or other requirements of other regulatory or enforcement agencies, including, but not limited to, local health agencies, the Regional Water Quality Control Board, the Department of Toxic Substances Control, air quality management district or air pollution control district, local land use authorities, and fire authorities.

(e) These regulations are intended to provide a sufficient level of information and oversight to ensure that the disposal of waste tires will be conducted in a manner which meets the purposes of the Act, as specified in Public Resources Code Section 40052, while protecting the public health, safety and the environment.

(f) For the purposes of this Article and Article 5.5 of this Chapter, disposal and storage of waste tires does not include the beneficial reuse of waste tires as the Board may determine on a case–by–case basis.

(1) Beneficial *re*use of altered waste tires is permitted provided the beneficial use does not pose a threat to public health, safety and the environment.

(2) In order to qualify as a beneficial use, the proposed use must employ one or more of the engineering properties of waste tires and provide equal or superior performance or lower cost relative to conventional technologies and the proposed use must be approved in writing by a registered civil engineer.

(3) An application to determine if a project is considered a beneficial reuse must be made in writing to the EA and the Board. The EA and the Board will evaluate the proposed project under the criteria set forth in subsections 17346(f)(1) and (2) and will independently determine and notify the applicant whether the proposed project constitutes a beneficial reuse of altered waste tires within ninety (90) days from their receipt of the application.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020, 43021 and 42808, Public Resources Code.

HISTORY

1. New article 5.4 (sections 17346–17349) and section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17346.1. Definitions.

For the purposes of this Article:

Unless the context requires another construction, the definitions set forth in this Article and in Division 30 of the Public Resources Code shall govern the construction of this Article. Certain of the definitions in Division 30 are interpreted herein for the purposes of this Article. The definitions set forth in Title 14, California Code of Regulations, Division 7, Chapter 3, Article 4.1 do not apply to this Article 5.4.

(a) "Air District" means Air Pollution Control District or Air Quality Management District.

(b) "Altered Waste Tire" means a waste tire that has been baled, shredded, chopped or split apart. "Altered waste tire" does not mean crumb rubber.

(c) "Cell" means that portion of compacted waste tires in a waste tire monofill that is enclosed by cover material during a designated period.

(d) "Local Fire Control Authority" means the public agency responsible for fire prevention and fire suppression for the area where a waste tire monofill facility is located or is proposed to be located.

(e) "Operator" means the person responsible for the overall operation of a waste tire monofill facility or the owner if there is no operator.

(f) "Owner" means a person who owns, in whole or in part, a waste tire monofill facility, the waste tires located at a waste tire monofill facility, or the land on which a waste tire monofill facility is located.

(g) "Rubber fines" are small particles of ground rubber that result as a by–product of producing shredded rubber.

(h) "RWQCB" means the Regional Water Quality Control Board.

(i) "Uncontaminated Waste Tires" mean waste tires that are not hazardous waste, as defined in Title 22, California Code of Regulations Sections 66260.10 and 66261.3.

(j) "Waste Tire Monofill" means a discrete unit, as defined in Title 27, California Code of Regulations, Section 20164, for disposal of only uncontaminated waste tires together with cover.

(k) "Waste tire monofill facility" means a solid waste facility that has or will have one or more waste tire monofills and that may handle waste tires for the purposes of disposal to a waste tire monofill or mining for recovery of waste tires from a waste tire monofill.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 40160, 42801.5, 42804, 42805, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17346.2. Regulatory Tier for Waste Tire Monofill Facilities.

(a) All Waste Tire Monofill Facilities shall obtain a Full Solid Waste Facilities Permit as set forth in Title 27, California Code of Regulations Sections 21563–21686, but excluding 21565.

(b) Except as expressly provided otherwise in this Article 5.4, all waste tire monofills shall comply with those provisions of the California Integrated Waste Management Act of 1989 (the Act), commencing with Public Resources Code Section 40000, and regulations promulgated pursuant to the Act which apply to solid waste landfills.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020, 43021 and 44002, Public Resources Code.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17346.3. Applicability of State Minimum Standards.

(a) Operating Criteria. All waste tire monofills shall comply with the operating criteria set forth in Title 27, California Code of Regulations, Division 2, Chapter 3, Subchapter 4, commencing with Section 20510, except for the following:

(1) Section 20680. Daily Cover

(2) Section 20690. Alternative Daily Cover

(3) Section 20695. Cover Performance Standards

(4) Section 20700. Intermediate Cover

(b) Additional Operating Requirements for Waste Tire Monofills. In addition to the requirements set forth in (a) above, all waste tire monofills shall adhere to the following waste tire monofill standards:

(1) Waste tire monofill facilities shall comply with Title 14, California Code of Regulations, Division 7, Chapter 3, Article 5.5 and with Title 14, California Code of Regulations, Division 7, Chapter 6, Article 8.5.

(2) Waste tires disposed in a waste tire monofill shall be altered waste tires or shall be otherwise permanently reduced in volume prior to disposal in a manner approved by the EA and the Board on a case–by–case basis. Waste tires disposed in a tire monofill shall also comply with the following specifications, unless alternative specifications are approved pursuant to subsection (b)(10):

(A) Tire pieces passing a 3 inch (76 mm) square mesh sieve shall be limited to a maximum of 50% by weight and tire pieces passing a 1.5 inch (38 mm) square mesh sieve shall be limited to a maximum of 25% by weight in the waste tire monofill to limit the potential for internal heating.

(B) The waste tire monofill shall contain less than 1% by weight of tire particles small enough to pass through a no. 4 (4.75 mm) sieve.

(C) The waste tire monofill shall contain no more than 5% altered tires having metal fragments that protrude more than 2 inches (51 mm) from the cut edges.

(D) Disposal of any material other than waste tires and cover is prohibited.

(E) Disposal of the remains of tires that have been subjected to fire shall be prohibited.

(F) Disposal of factory–reject tire carcasses that have been only partially vulcanized shall be prohibited.

(G) Disposal of rubber fines shall be restricted to a separate area of the monofill as a discrete cell that is isolated from altered waste tire fill cells and mixed completely with an equal volume of cover during the filling operations.

(H) In the top 12–inch layer of altered waste tires, a minimum of 90 percent (by weight) of the altered waste tires shall have a maximum dimension, measured in any direction, of 12 inches (305 mm) and 100 percent of the altered waste tires shall have a maximum dimension, measured in any direction, of 18 inches (457 mm).

(3) Representative samples of altered waste tires to be disposed in a waste tire monofill shall be collected and analyzed for gradation and protruding wire on a monthly basis, or less frequently if approved by the EA and the Board, to ensure compliance with subsections 17346.3(b)(2)(A), (B), and (C). Representative samples of cover to be disposed or utilized at a waste tire monofill shall be tested to ascertain compliance with the limitation on organic matter set forth in subsection 17346.3(b)(5) of this Article 5.4. Records of the results of these samples shall be maintained in the records required by Section 17346.4 of this Article 5.4.

(4) The last lift of altered waste tires disposed in a waste tire monofill shall be compacted to provide a flat and stable surface.

(5) Waste tire monofill cells shall not exceed a maximum depth of 20 feet (6 m), and a maximum cell area of 12,500 square feet (1161 square meters). A minimum distance of 2 feet shall be maintained between tire shreds in adjacent cells. Intermediate cover shall be placed to wholly encapsulate each monofill cell. Intermediate cover shall consist of soil with less than 5% organic matter as determined by a loss on ignition test (ASTM D 2974–00) and compacted to the maximum density obtainable at optimum moisture content, plus or minus 3 percent, to obtain a stable surface, using methods that are in accordance with accepted engineering practice.

(6) The active face of not more than two (2) cells shall be uncovered at any given time within a waste tire monofill facility.

(7) A minimum of 6 inches (152 mm) of cover shall be placed over the entire working face at the end of each operating day if: (A) the working face is to remain open and inactive for longer than 24 hours; or (B) when there is precipitation. The cover shall consist of the same material used as intermediate cover.

(8) If more than one waste tire monofill cell is stacked vertically, temperature sensors shall be installed within the underlying cells to monitor cell temperatures. The operator shall submit a plan that sets forth the location and frequency of sensor placement for approval by the EA and the CIWMB. In addition, a fire prevention plan shall be in place to address any zones, which experience sustained elevated temperatures to reduce temperatures to safe levels. Both plans shall be made part of the Fire Prevention, Control and Mitigation Plan, which is defined in Section 17346.5(b)(1). Records of these results of elevated temperature shall be maintained in the records required by Section 17346.4 of this Article 5.4.

(9) An adequate stockpile of cover and equipment, as required and approved by the EA and the Board, shall be available in the event of fire to

insure a cover of a minimum depth of 3 feet on all waste tires, crumb rubber and rubber fines at the waste tire monofill facility exposed to the atmosphere.

(10) The operator may propose to the EA and the Board alternative operating criteria to those specified in subsections 17346.3(b)(2) through (b)(9) together with information supporting the proposal. The EA and the Board may approve such alternative criteria only if the EA and the Board determine that the alternative criteria protect the public health and safety and the environment at least as effectively as the criteria specified in subsections 17346.3(b)(2) through (b)(9).

(11) Any mining or excavation of waste tires from a waste tire monofill shall be in accordance with a site-specific excavation and materials management plan approved by the EA and the Board.

(12) For the purposes of this Article, in addition to the requirements of Title 27, California Code of Regulations, Section 20610 (Training), site personnel shall be trained in fire safety, prevention and suppression.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

§ 17346.4. Waste Tire Monofill Facility Records.

(a) In addition the requirements set forth in Title 27, California Code of Regulations, Section 20510, waste tire monofills shall record the following information and maintain it with other facility records:

(1) Results from temperature sensor monitoring required by this Article 5.4, subsection 17346.3(b)(8).

(2) Results from the sampling of altered waste tires as required by this Article 5.4, subsection 17346.3(b)(3)

(3) Results from load checking program as required by Title 27, California Code of Regulations, Section 20870.

(4) Waste Tire Hauler Manifests as required by Title 14, California Code of Regulations, Section 18459.3.

(5) Results from the loss of ignition test (ASTM D 2974-00) for cover as required by this Article 5.4, subsection 17346.3(b)(3).

(6) Any additional records required as part of the terms and conditions of the Full Solid Waste Facilities Permit.

(b) Notwithstanding subsection 17346.4 (a), for purposes of this Article, the requirements of Title 27, California Code of Regulations, subsection 20515(a)(6)-(MSWLF Unit Records) shall not apply to waste tire monofills.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

§ 17346.5. Report of Facility Information for Waste Tire Monofill Facilities.

(a) Each operator of a waste tire monofill facility must file with the EA a Report of Disposal Site Information (RDSI) as required in Title 27, California Code of Regulations, Sections 21590 & 21600.

(b) In addition to the RDSI requirements set forth in Title 27, California Code of Regulations, Sections 21590 and 21600, the RDSI shall include the following:

(1) A Fire Prevention, Control and Mitigation Plan which describes the measures the operator will take to: prevent tires from igniting, control and suppress the tire fire if it occurs, and mitigate the environmental impacts created by the tire fire at the waste tire monofill and by extinguishing the fire. The operator of a waste tire monofill facility shall specify the time frames under which any contaminated liquids generated as a result of any tire fire will be contained and removed and remedial actions will be implemented. Prior to Board concurrence in a permit, the time frames must be approved by the Board.

(2) Written evidence that the operator has submitted the Fire Prevention, Control and Mitigation Plan to the Local Fire Control Authority.

(3) Written evidence that the applicable Local Fire Control Authority has determined that the waste tire monofill facility, as described in the RDSI, complies with all fire prevention, fire suppression, and other requirements applicable to such facilities within the jurisdiction of the Local Fire Control Authority.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

§ 17346.6. Design and Construction Standards.

(a) The waste tire monofill shall be constructed in accordance with design plans and specifications prepared, signed, and stamped by a civil engineer registered by the State of California, pursuant to Section 6762 of the Business and Professions Code.

(b) As specified in Section 17346.5 of this Article, operators of waste tire monofills shall prepare a Fire Prevention, Control and Mitigation Plan. As part of this plan, an emergency containment system that limits the flow of any contaminated liquids resulting from a fire in the tire monofill must be provided. The emergency containment system must contain any contaminated liquids resulting from a fire in the waste tire monofill and fire suppression for a period consistent with the implementation of the Fire Prevention, Control and Mitigation Plan. The emergency containment system may be the existing natural geologic condition or may be constructed (utilizing clay or composite material together with a protective operations layer). The emergency containment system shall also include a collection system to remove any contaminated liquid that accumulates within the monofill in the event of a fire within or proximate to the tire monofill. The emergency containment system must be able to withstand breaching or rupture due to temperatures and other conditions that may result from a fire within the tire monofill and from activities undertaken to extinguish a fire within the tire monofill or to remediate any hazard or risk of hazard to the public health and safety or the environment due to a fire within the tire monofill.

(c) Waste tire monofills shall be designed and constructed to minimize water from entering or accumulating in fill areas, or ponding on cells. Storm water may be temporarily collected in lined dewatering sumps that are located on the cells. The design and construction of the tire monofill must allow for the removal of storm water and water that accumulates in the monofill as quickly as necessary to minimize the risk of fire within the monofill, as determined by the EA and the Board.

(d) The operator of a waste tire monofill shall implement a construction quality assurance (CQA) program to ensure compliance with the above requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

§ 17346.7. Siting Criteria.

(a) Waste tire monofill facilities shall not be sited in an area subject to inundation or washout due to floods with a 100-year return period.

(b) Waste tire monofills shall meet seismic design criteria for Class III units as set forth in Title 27, California Code of Regulations, Section 20370.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

§ 17347. Closure and Postclosure Maintenance Criteria.

(a) All waste tire monofills shall comply with the requirements set forth in Title 27, California Code of Regulations, Division 2, Chapter 3, Subchapter 5, Article 2, commencing at Section 21090.

(b) Notwithstanding subsection 17347(a) above, the operator may propose to the EA and the Board alternative closure and postclosure maintenance criteria to those specified in subsection (a), together with information supporting the proposal. The EA and the Board may approve such alternative criteria only if the EA and the Board determine that the alternative criteria protect the public health and safety and the environment at least as effectively as the criteria specified in subsection 17347(a).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020, 43021, 43103 and 43501, Public Resources Code.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17347.1. Closure and Postclosure Maintenance Plans.

All waste tire monofills shall comply with the requirements set forth in Title 27, California Code of Regulations, Chapter 4, Subchapter 4, commencing at Section 21769.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40052, 43020, 43021, 43103 and 43501, Public Resources Code.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17348. Corrective Action Criteria.

As part of the facility closure plan, the operator of a waste tire monofill shall establish corrective action procedures that include detecting, characterizing and responding to unpermitted discharges of solid waste to land, the detection of elevated subsurface temperatures and the mitigation of any fire at the facility. The corrective action procedures shall also include an estimated cost to initiate and complete the corrective action for all known and reasonably foreseeable releases from the waste tire monofill.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 40508, Public Resources Code. Reference: Sections 40508 and 43103, Public Resources Code; and Section 258.73, Title 40, Code of Federal Regulations.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

§ 17349. Financial Assurances for Closure, Postclosure Maintenance, Corrective Action and Operating Liability.

All waste tire monofills shall comply with the requirements set forth in Title 27, California Code of Regulations, Division 2, Chapter 6 commencing at Section 22200.

NOTE: Authority cited: Sections 40502, 40508 and 43509, Public Resources Code. Reference: Sections 40508, 43040, 43103, 43500, 43600, 43601, 43601.5, 43602 and 43604, Public Resources Code; and Section 258.73, Title 40, Code of Federal Regulations.

HISTORY

1. New section filed 10–14–2003; operative 11–13–2003 (Register 2003, No. 42).

Article 5.5. Waste Tire Storage and Disposal Standards

§ 17350. Applicability.

(a) Any facility storing 500 or more waste tires outdoors must comply with the technical and operational standards in sections 17351 through 17355 of this Article.

(b) Any facility storing waste tires indoors must comply with the technical and operational standards in section 17356 of this Article.

(c) Waste tires that are disposed of by burying at a solid waste disposal facility are addressed in section 17355 of this Article.

(d) For purposes of determining the applicability of this Chapter, altered waste tires shall be counted as passenger tire equivalents (PTE).

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 5–25–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer of subsection (b) filed 6–16–98 as an emergency; operative 6–16–98 (Register 98, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–14–98 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 6–16–98 emergency amendment by operation of Government Code section 11346.1(g) (Register 98, No. 46).
11. Repealer of subsection (b) filed 11–9–98 as an emergency; operative 11–9–98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–9–99 or emergency language will be repealed by operation of law on the following day.
12. Repealer of subsection (b) refiled 3–5–99 as an emergency; operative 3–5–99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–6–99 or emergency language will be repealed by operation of law on the following day.
13. Repealer of subsection (b) refiled 7–2–99 as an emergency; operative 7–6–99 (Register 99, No. 27). A Certificate of Compliance must be transmitted to OAL by 11–3–99 or emergency language will be repealed by operation of law on the following day.
14. Repealer of subsection (b) refiled 10–29–99 as an emergency; operative 10–29–99 (Register 99, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–28–2000 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 10–29–99 order transmitted to OAL 2–22–2000 and filed 3–31–2000 (Register 2000, No. 13).
16. Repealer and new section heading and amendment of section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17351. Fire Prevention Measures.

(a) Communication equipment shall be maintained at all facilities, if they are staffed by an attendant, to ensure that the site operator can contact local fire protection authorities in the event of fire.

(b) Adequate equipment to aid in the control of fires must be provided and maintained at the facility at all times. At a minimum the following items shall be maintained on site and in working order at all times:

(1) One (1) dry chemical fire extinguisher;

(2) One (1) two and one–half gallon water extinguisher;

(3) One (1) pike pole or comparable pole at least 10 feet in length to separate burning from non–burning tires; and

(4) One (1) round point and one (1) square point shovel.

(5) One (1) dry chemical fire extinguisher with a minimum rating of 4A:40BC shall be carried on each piece of fuel–powered equipment used to handle waste tires;

(c) An adequate water supply shall be available for use by the local fire authority. The water supply shall be capable of delivering at least 1,000 gallons per minute for a duration of at least three hours and at least 2,000 gallons per minute for a duration of at least three hours if the sum of altered plus whole waste tires exceeds 10,000.

(d) All of the requirements of subsections (b) and (c) shall apply unless the local fire authority having jurisdiction over a particular facility determines that a different requirement is necessary or adequate to meet the intent of these regulations for fire control and the protection of life and property. This may include the availability of earth moving equipment or other approved means to control the tire fire. Any change in, or any new, local fire authority requirements that affect the requirements in this Article shall be reported to the Board by the operator within 30 days after their effective date. Any requirements approved by the local fire authority shall be subject to Board concurrence at the time of issuance or renewal of the permit.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 5–25–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (b)(3) and new subsection (b)(5) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17352. Facility Access and Security.

(a) Signs – for facilities open to the public a sign shall be posted at the facility entrance stating the name of the operator, operating hours, and site rules.

(b) Attendant – An attendant shall be present when the facility is open for business if the facility receives tires from persons other than the operator of the facility.

(c) Access – An access road to the facility must be maintained passable for emergency equipment and vector control vehicles at all times. Unauthorized access must be strictly controlled.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsections (a) and (c) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsections (a) and (c) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17353. Vector Control Measures.

(a) All waste tires shall be stored in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means:

(1) Cover with impermeable barriers other than soil to prevent entry or accumulation of precipitation; or

(2) Use of treatments or methods to prevent or eliminate vector breeding as necessary, provided the control program is approved as appropriate and effective by the local vector control authority, if such authority exists. If no local vector control authority exists, the local Environmental Health Department or other local agency with authority over vector control shall approve the vector control plan. Any control program approved by the local vector control authority shall be subject to Board concurrence at the time of issuance or renewal of the waste tire facility permit.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (a)(2) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17354. Storage of Waste Tires Outdoors.

(a) Except as provided in subsection (c) waste tires shall be restricted to individual piles, which include stacks and racks of tires that do not exceed 5,000 square feet of contiguous area. Any pile shall not exceed 50,000 cubic feet in volume nor 10 feet in height. Piles shall not exceed 6 feet in height when within 20 feet of any property line or perimeter fencing. Waste tires shall not be located within 10 feet of any property line or perimeter fencing. The minimum distance between waste tire piles and between waste tire piles and structures that are located either on–site or off–site shall be as specified in Table I.

(b) Except as provided in subsection (c) waste tires shall be separated from vegetation and other potentially flammable materials by no less than 40 feet. Accessible fire lanes with a minimum width as specified in Table I shall be provided between tire storage units. Fire lanes shall be kept free of flammable or combustible material and vegetation. Access to fire lane(s) for emergency vehicles must be unobstructed at all times. Open flames, blow torches, or highly flammable materials, including but not limited to, tire inner tubes, are prohibited within 40 feet of a waste tire pile.

Table I
Minimum Separation Distances (Ft.)

Length of Exposed Face (Ft.)	Tire Storage Pile Height (Ft.)		
	6	8	10
25	50	56	62
50	66	75	84
100	84	100	116
150	99	117	135
200	111	130	149
250	118	140	162

(c) All of the requirements in subsections (a) and (b) shall apply to the storage of waste tires unless, for any particular requirement, the local fire authority having jurisdiction over a particular facility determines that a different requirement is necessary or adequate to meet the intent of these regulations for the prevention of fire and the protection of life and property. Any change in, or any new, local fire authority requirements that affect the requirements in this Article shall be reported to the Board by the operator within 30 days after their effective date. Any requirements ap-

proved by the local fire authority shall be subject to Board concurrence at the time of issuance or renewal of the permit.

(d) Surface water drainage shall be directed around and away from the waste tire storage area.

(e) Waste tires at existing waste tire facilities shall not be stored on surfaces with grades that will interfere with fire fighting equipment or personnel unless mitigation measures have been approved in writing by the local fire authority, or a fire safety engineer registered by the State of California. Measures established by a fire safety engineer shall be subject to approval by the local fire authority.

(f) New waste tire facilities shall not:

(1) Be sited in any area where they may be subjected to immersion in water during a 100–year storm unless the operator demonstrates to the Board that the facility will be designed and operated so as to prevent waste tires from migrating off–site; or

(2) Be located on sites with grades or other physical features that will interfere with fire fighting equipment or personnel.

(g) Tires must be removed from rims immediately upon arrival at the facility.

(h) The site shall be designed and constructed to provide protection to bodies of water from runoff of pyrolytic oil resulting from a potential tire fire.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsections (a), (b), and (d)–(h) and amendment of subsection (c) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of section heading, subsection (a) and Table 1 filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17355. Disposal of Waste Tires at Solid Waste Facilities.

(a) Waste tires may not be landfilled in a solid waste disposal facility which is permitted pursuant to Chapter 3 of Part 4 of the Public Resources Code, commencing with section 44001, unless they are permanently reduced in volume prior to disposal by shredding, or other methods subject to the EA approval and Board approval.

(b) The requirement of subsection (a) shall not apply to waste tires received which are commingled with municipal solid waste that arrive in loads, where the waste tires comprise less than one–half of one (0.5) percent by weight of the total load, or where the waste tires inadvertently arrive in homeowner delivered household loads of mixed waste and are not readily removable from the waste stream; or

(c) All waste tires stored at a solid waste facility shall meet the requirements of this Article.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of section heading and section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 17356. Indoor Storage.

Waste tires stored indoors must be stored under conditions that meet or exceed those in "The Standard for Storage of Rubber Tires", National Fire Protection Association, NFPA 231D–1989 edition, published by the National Fire Protection Association, which is incorporated by reference. This requirement shall apply unless the local fire authority having jurisdiction over a particular facility determines that a different requirement is necessary or adequate to meet the intent of these regulations for fire control and the protection of life and property. Any change in, or any new, local fire authority requirements that affect the requirements in this Article shall be reported to the Board by the operator within 30 days after their effective date.

NOTE: Authority cited: Sections 40502, 42820, 42830 and 43020, Public Resources Code. Reference: Sections 42820, 42821, 42830, 42832 and 43020, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer of subsection (a) designator and subsections (b)–(b)(2) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 5.6. Nonhazardous Petroleum Contaminated Soil Operations and Facilities Regulatory Requirements

§ 17360. Authority and Scope.

(a) This Article sets forth permitting requirements and minimum operating standards for operations that handle only nonhazardous petroleum

contaminated soil, as specified. This Article is not applicable to Class II or III landfills that handle other waste types in addition to contaminated soil.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(c) This Article implements those provisions of the Act relating to the handling of nonhazardous petroleum contaminated soil. Nothing in this Article is intended to limit the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer.

(d) Nothing in this Article shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws regulations, or reports, or other requirements of other regulatory or enforcement agencies, including but not limited to, local health entities, regional water quality control boards and air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(e) Nothing in this Article is intended to require the owner or operator of a contaminated soil transfer/processing operation or disposal facility to comply with the Enforcement Agency Notification requirements or to obtain a tiered solid waste facilities permit pursuant to this Article if that owner or operator already has a valid full solid waste facilities permit pursuant to section 44001 of the Public Resources Code.

(f) Operations and facilities subject to this Article shall be in compliance with the provisions of this Article within 90 days after effective date.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5.6 (sections 17360–17366) and section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17361. Definitions.

For the purposes of this Article:

(a) "Air District" means Air Pollution Control District or Air Quality Management District.

(b) "Contaminated Soil" means soil that:

(1) contains designated or nonhazardous concentrations, as set forth in Title 23, Chapter 15, Article 1, section 2510 et seq. of the California Code of Regulations, of petroleum hydrocarbons, such as gasoline and its components (benzene, toluene, xylene, and ethylbenzene), diesel and its components (benzene), virgin oil, motor oil, or aviation fuel, and lead as an associated metal; and

(2) has been determined pursuant to section 13263(a) of the Water Code to be a waste that requires regulation by the RWQCB or Local Oversight Agency.

(c) "Contaminated Soil Transfer/Processing Operation" means an operation that handles only contaminated soil for purposes of treatment, storage, or transfer. It does not include manufacturing operations.

(d) "Contaminated Soil Disposal Facility" means a facility that handles only contaminated soil for purposes of disposal. It does not include manufacturing operations.

(e) "Disposal" means

(1) final deposition of contaminated soil onto land, or,

(2) when located at a transfer/processing operation(s), deposition of contaminated soil onto land for a combined period of time greater than one year for transfer, storage, and/or treatment.

(3) Notwithstanding subdivision (e)(2) of this section, deposition of contaminated soil onto land shall not constitute disposal if the RWQCB or the enforcement agency authorizes contaminated soil to remain within the operations area for a period of time greater than one year for the purpose of treatment.

(4) Once the enforcement agency has reason to believe that contaminated soil has been disposed, the burden of proof shall be on the owner or operator to demonstrate that disposal has not occurred.

(5) Disposal does not include the use of contaminated soil for cover material at a solid waste landfill. Notwithstanding this section, contaminated soil shall still require approval for use as cover by the CIWMB and possibly other governmental agencies, including the RWQCB and Air Districts.

(f) "Local Oversight Agency" means the department, office, or other agency of a county or city authorized pursuant to law other than the Act, commencing with section 40000 of the Public Resources Code, to oversee the cleanup of contaminated soil at a specific location, including but not limited to those agencies designated pursuant to Health and Safety Code section 25283 (Underground Storage Tanks).

(g) "Manufacturing" means using contaminated soil as a raw material in making a finished product that is distinct from soil. Such finished products include but are not limited to asphalt and asphaltic concrete.

(h) "Noncontaminated Soil" means soil that is not required to be regulated as a waste by the RWQCB or Local Oversight Agency.

(i) "Operations Area" means the following areas within the boundary of a contaminated soil transfer/processing operation or disposal facility which is regulated by the CIWMB, the boundary may or may not be the same as the property boundary and could reflect a smaller area:

(1) equipment management area, including cleaning, maintenance, and storage areas;

(2) stocking areas for contaminated soil; and,

(3) treatment and/or transfer and/or storage and/or disposal areas.

(j) "Operator" means the owner; or other person who through a lease, franchise agreement or other arrangement with the owner, is legally responsible for all of the following:

(1) complying with regulatory requirements set forth in this Article;

(2) complying with all applicable federal, state and local requirements;

(3) the design, construction, and physical operation of the operations area; and

(4) site restoration.

(k) "Owner" means the person or persons who own, in whole or in part, a contaminated soil transfer/processing operation or disposal facility, or the land on which it is located.

(*l*) "RWQCB" means the Regional Water Quality Control Board.

(m) "Site" means the operations area.

(n) "Transfer" means a handling method where contaminated soil is received temporarily for purposes of transferring from one vehicle to another.

(o) "Treatment" means a reduction in petroleum hydrocarbons present in contaminated soil to a concentration specified by the RWQCB or Local Oversight Agency. Treatment methods may include, aeration, bioremediation, thermal, solidification and chemical fixation, and soil washing.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17362.0. Regulatory Tiers for Contaminated Soil Operations and Facilities.

Sections 17362.1 through 17362.3 set forth the regulatory tier requirements (commencing at section 18100) that apply to specified types of contaminated soil operations and facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17362.1. Excluded Operations.

The solid waste handling operations and facilities listed in this section do not constitute contaminated soil transfer/processing operations or disposal facilities for the purposes of this Article and are not required to meet the requirements set forth herein. Nothing in this section precludes the

enforcement agency or the board from inspecting an excluded operation or facility to verify that the operation or facility is being conducted in a manner that qualifies as an excluded operation or facility or from taking any appropriate enforcement action.

(a) Transfer/processing of contaminated soil:

(1) from a single generator source owned or leased by the generator, its parent, or subsidiary to property owned or leased by the same generator, its parent, or subsidiary; or,

(2) from a single generator source owned or leased by the generator, its parent, or subsidiary to a specific location for a one time treatment that is within the jurisdiction of the RWQCB and/or the Local Oversight Agency, and/or air district.

(b) Disposal of contaminated soil from a single Petroleum Exploration and Production Company, its parent, or subsidiary to property owned or leased by the same Petroleum Exploration and Production Company, its parent, or subsidiary.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17362.2. Contaminated Soil Transfer/Processing Operations.

All contaminated soil transfer/processing operations, except as otherwise provided in this Article, shall comply with the Enforcement Agency Notification requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing at section 18103). These operations shall be inspected by the enforcement agency at least once quarterly.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17362.3. Contaminated Soil Disposal Facilities.

All contaminated soil disposal facilities, except as otherwise provided in section 17362.1, shall obtain a Standardized Contaminated Soil Solid Waste Facilities Permit, as set forth in form CIWMB 90 "Contaminated Soil Standardized Solid Waste Facilities Permit" (new 8/95), which is incorporated herein by reference (See Appendix A.), pursuant to the requirements of Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18105).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).
2. Change without regulatory effect amending section filed 11–4–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 45).

§ 17363. Standardized Contaminated Soil Solid Waste Facilities Permit Terms and Conditions.

The enforcement agency shall include in a Standardized Contaminated Soil Solid Waste Facilities Permit only those terms and conditions, and no others, contained in form CIWMB 90 "Contaminated Soil Standardized Solid Waste Facilities Permit" (rev. 12/96), which is incorporated herein by reference. (See Appendix A.)

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).
2. Change without regulatory effect amending section and moving for CIWMB–90 to Appendix A (following section 18831) filed 11–4–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 45).
3. Change without regulatory effect amending section filed 2–6–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).

§ 17364.0. Contaminated Soil Operation and Facility Standards.

Sections 17364.1 through 17364.3 set forth the minimum standards that apply to all types of contaminated soil operations and facilities.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17364.1. Siting on Landfills.

(a) Contaminated soil operations and facilities located on top of closed solid waste landfills shall meet postclosure land use requirements pursuant to Title 14, Division 7, Chapter 3, Article 7.8, section 17796 of the California Code of Regulations.

(b) Contaminated soil operations and facilities that would be located on top of intermediate cover on a solid waste landfill shall locate operations on areas on foundation substrate that is stabilized by compaction to minimize differential settlement, ponding, soil liquefaction, or failure of pads or structural foundations.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17364.2. General Design Requirements.

Contaminated soil operations and facilities shall be designed and constructed in such a manner as to ensure that the operations and facilities comply with the operational requirements set forth in this Article. A copy of the design of the contaminated soil disposal facility is required as part of the Report of Contaminated Soil Disposal Site Information, as set forth in section 18224.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

[The next page is 737.]

§ 17364.3. General Operating Standards.

(a) All activities shall be conducted in a manner that minimizes litter, nuisances, dust, noise impacts, or other public health and safety and environmental hazards.

(b) Unauthorized human or animal access to the operation or facility shall be prevented.

(c) Traffic flow into, on, and out of the operation and facility shall be controlled in a safe manner.

(d) All operations and facilities open for public business shall post legible signs at all public entrances that include the following:

(1) name of the operation,

(2) name of the operator,

(3) hours of operation,

(4) specify that only nonhazardous petroleum contaminated soil will be accepted, and

(5) phone number where operator or designee can be reached in case of an emergency.

(e) The operator shall provide telephone or radio communication capability for emergency purposes.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17365. General Record Keeping Requirements.

All contaminated soil/transfer operations and disposal facilities shall meet the following requirements:

(a) All records required by this Article shall be kept by the operator in one location and accessible for five (5) years and shall be available for inspection by authorized representatives of the board, enforcement agency, local health entity, and other duly authorized regulatory and enforcement agencies during normal working hours.

(b) The operator shall maintain a log of special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Special occurrences may include: fires, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted, flooding and other unusual occurrences.

(c) The operator shall record any written public complaints received by the operator, including:

(1) the nature of the complaint,

(2) the date the complaint was received,

(3) if available, the name, address, and telephone number of the person or persons making the complaint, and

(4) any actions taken to respond to the complaint.

(d) The operator shall record, as specified by the RWQCB, the types and concentrations of constituents, the date, and quantity of contaminated soil accepted at the operation or facility; and for treatment, transfer, or storage operations, the types and concentrations of constituents, the date, and quantity of contaminated and noncontaminated soil leaving the operations. Where no requirements have been specified by the appropriate RWQCB, the operator shall record the same information as provided by generator source. The operator shall also record the name of all transfer, storage, and/or treatment operations where the contaminated soil was located prior to the receipt by the operator and the dates the contaminated soil was received at each of these operations and removed.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 17366. Contaminated Soil Operation and Facility *Restoration.*

All contaminated soil operations and facilities shall meet the following requirements:

(a) The operator shall provide the enforcement agency written notice of intent to perform site restoration, at least 30 days prior to beginning site restoration.

(b) The operator(s) and owner(s) shall provide site restoration necessary to protect public health, safety, and the environment.

(c) The operator(s) and owner(s) shall provide site restoration necessary to protect public health, safety, and the environment.

(c) The operator shall ensure that the following site restoration procedures are performed upon completion of operation and termination of service:

(1) the operation grounds, excluding the disposal area, shall be cleaned of all contaminated soil, construction scraps, and other materials related to the operation, and these materials legally recycled, reused, or disposed of,

(2) all machinery shall be cleaned of contaminated soil, and

(3) al remaining structures shall be cleaned of contaminated soil.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

Article 5.7. Hazardous Waste Disposal Facilities Disposing Nonhazardous, Nonputrescible, Industrial Solid Waste Regulatory Requirements

§ 17367. Authority and Scope.

(a) This Article sets forth permitting requirements and minimum operating standards for those hazardous waste disposal facilities which hold a valid Hazardous Waste Facility Permit from the Department of Toxic Substances Control and codispose nonhazardous, nonputrescible, industrial solid waste with hazardous waste in one or more waste management units within the disposal facility.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with Section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(c) Nothing in this Article limits or restricts the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict cities or counties from promulgating laws which are at least as strict as the regulations contained in this Article. However, no city or county may promulgate laws which are inconsistent with the provisions of this Article or Title 22 California Code of Regulations, Division 4.5.

(d) Nothing in this Article shall be construed as relieving any owner or operator, from obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or other requirements of other regulatory or enforcement agencies, including, but not limited to, local health agencies, the Regional Water Quality Control Board, the Department of Toxic Substances Control, air quality management district or air pollution control district, local land use authorities, and fire authorities.

(e) These regulations are intended to provide a sufficient level of information and oversight to ensure that the codisposal of nonhazardous, nonputrescible, industrial solid waste at a hazardous waste disposal facility will be conducted in a manner which meets the purposes of the Act, as specified in Public Resources Code Section 40052, while protecting the public health, safety and the environment.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 44103, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5.7 (sections 17367–17370.2) and section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.

2. New article 5.7 (sections 17367–17370.2) and section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New article 5.7 (sections 17367–17370.2) and section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.
4. New article 5.7 (sections 17367–17370.2) and section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New article 5.7 (sections 17367–17370.2) and section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including amendment of subsection (c), transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

§ 17368. Definitions.

For the purposes of this Article:

(a) "Air District" means Air Pollution Control District or Air Quality Management District.

(b) "Board" means the California Integrated Waste Management Board.

(c) "Codisposal" means the final deposition of nonhazardous, nonputrescible, industrial solid waste disposed with hazardous waste in a waste management unit.

(d) "Cover" mean soils or alternative materials used in covering the nonhazardous, nonputrescible, industrial solid waste in a hazardous waste disposal facility waste management unit.

(e) "DTSC" means Department of Toxic Substances Control.

(f) "EA" means enforcement agency as defined in Public Resources Code section 40130.

(g) "Hazardous waste disposal facility," or "facility" means a disposal facility that holds and maintains a valid Hazardous Waste Facility Permit issued by the Department of Toxic Substances Control pursuant to section 25200 of the California Health and Safety Code.

(h) "Nonhazardous, Nonputrescible, Industrial Solid Waste" means solid waste (as defined in Public Resources Code Section 40191) which also meets all of the following criteria:

(1) Nonputrescible: Solid wastes which are not capable of being decomposed by micro–organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions. For example, wastes that are putrescible, and do not qualify as nonputrescible, include without limitation food wastes, offal and dead animals.

(2) Liquid Content: Solid wastes that contain no free liquid, whether such wastes are in bulk or in containers. The absence of free liquid shall be determined by the method specified in Title 22 California Code of Regulations section 66264.314(b).

(3) Nonhazardous, Nonputrescible, Industrial Solid Waste expressly excludes:

(A) Household waste as defined in Title 27 California Code of Regulations section 20164;

(B) Wastes which are prohibited at any hazardous waste disposal facility by applicable statutes or regulations of any governmental body having jurisdiction; and

(C) With respect to a specific hazardous waste disposal facility, wastes which are prohibited at that particular hazardous waste disposal facility by the terms and conditions of any permit or entitlement to use issued by a governmental body.

(i) "Operating Record" means a facility's records of compliance with the requirements set forth in this Article.

(j) "RWQCB" means the Regional Water Quality Control Board.

(k) "Waste management unit" or "unit" means an area within a hazardous waste disposal facility where hazardous wastes may be disposed pursuant to a hazardous waste facility permit issued by the Department of Toxic Substances Control, expressly excluding surface impoundments.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including repealer of subsections (h)(3)–(h)(4)(C) and subsection renumbering, transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

§ 17369. Regulatory Tier for Hazardous Waste Disposal Facilities Codisposing Nonhazardous, Nonputrescible, Industrial Solid Waste.

(a) All hazardous waste disposal facilities codisposing nonhazardous, nonputrescible, industrial solid waste shall comply with the Registration Permit requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18104). These facilities shall be inspected monthly by the EA, or more frequently if necessary to verify compliance with the standards set forth in this Article. "Hazardous waste" (as defined in Title 22 California Code of Regulations sections 66260.10 and 66261.3) shall not be accepted under the provisions of the Registration Permit issued pursuant to this section.

(b) In addition to the Registration Permit Application required by subdivision (a) of this section, each operator of a hazardous waste disposal facility shall file with the EA a "Nonhazardous, Nonputrescible, Industrial Solid Waste Codisposal Plan" (Plan) (as specified in section 18225). The information contained in the Plan shall be reviewed by the EA, in the same manner as required for the application, to determine whether it is complete and correct as defined in Title 14, Division 7, Chapter 5.0, Article 3.0, section 18101. The EA shall obtain written verification from Board staff that section 18225(g) and (h) of Article 3.2 are correct prior to their determination of a complete and correct application.

(c) A hazardous waste disposal facility that accepts other types of solid wastes, which do not meet the definition of "nonhazardous, nonputrescible, industrial solid waste", shall obtain a Full Solid Waste Facilities Permit pursuant to the requirements of Title 27 California Code of Regulations, Division 2, Subdivision 1, Chapter 4 (§21450 et seq.) prior to commencing operations. "Hazardous waste" (as defined in Title 22 California Code of Regulations sections 66260.10 and 66261.3) shall not be accepted under the provisions of the Full Solid Waste Facilities Permit issued pursuant to Title 27 California Code of Regulations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including amendment of subsections (a) and (b) and new subsection (c), transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

§ 17370.1. General Operating Standard.

The daily cover shall be applied as approved by Department of Toxic Substances Control pursuant to Title 22 California Code of Regulations sections 66264.301(i) or 66265.301(i), as applicable, or the Air District, whichever requirement is more stringent.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including amendment of section, transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

§ 17370.2. Record Keeping Requirements.

Each operator of a hazardous waste disposal facility shall meet the following requirements with respect to nonhazardous, nonputrescible, industrial solid waste disposed at the facility:

(a) All records required by this Article shall be kept in one location and accessible for three years and shall be available for inspection by authorized representatives of the EA, the Board, and other duly authorized regulatory and enforcement agencies during normal working hours. If necessary, copies of these records may be maintained at an alternative site, as long as that site is easily accessible to the EA.

(b) The operator shall notify the EA by telephone within 24 hours of all incidents requiring the implementation of emergency procedures, unless the EA determines that a less immediate form of notification will be sufficient to protect public health and safety and the environment, as it relates to the acceptance and disposal of nonhazardous, nonputrescible, industrial solid wastes (as defined in section 17368 of this Article).

(c) The operator shall maintain records of the tonnage of nonhazardous, nonputrescible, industrial solid waste that is codisposed in each waste management unit at the facility on a daily basis. The operator shall also maintain records of the tonnage of hazardous waste codisposed in each waste management unit at the facility on a monthly basis. These records shall be provided to the EA or the Board upon request.

(d) By March 1 of each year, the operator shall annually report to the EA and the Board the total amount of nonhazardous, nonputrescible, industrial solid waste and hazardous waste codisposed the previous year.

(e) The operator shall maintain a copy of the demonstration required pursuant to Title 14 California Code of Regulations section 18225(f) in the operating record.

(f) The operator shall provide the EA with written notice of intent (Notice) to close a waste management unit at least 60 days prior to beginning unit closure, and maintain a copy of the Notice in the operating record.

(g) All such facilities shall maintain records as required by Title 14 California Code of Regulations section 18810 et seq.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 43501, Public Resources Code.

HISTORY

1. New section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including amendment of subsections (a), (e) and (f) and new subsection (g), transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

Article 5.8. Nonhazardous Ash Regulatory Tier Requirements

§ 17375. Authority and Scope.

(a) This Article sets forth permitting requirements and minimum operating standards for operations and facilities that handle and/or dispose of nonhazardous ash, as specified. This Article is not applicable to Class II or III landfills that handle and/or dispose of other waste types in addition to nonhazardous ash.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(c) This Article implements those provisions of the Act relating to the handling and/or disposal of nonhazardous ash. Nothing in this Article is intended to limit the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer.

(d) Nothing in this Article shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports, or other requirements of other regulatory or enforcement agencies, including but not limited to, local health entities, regional water quality control boards, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(e) These regulations are intended to provide a sufficient level of information and oversight to ensure that the transfer and processing, or monofilling of nonhazardous ash will be conducted in a manner which meets the purposes of the Act while protecting public health, safety and the environment. Materials that may otherwise be disposed to landfills may be, among other things, processed to reduce, reuse, and recycle the material to the maximum extent feasible in an efficient and cost–effective manner to conserve water, energy and other natural resources.

(f) Operations and facilities subject to this Article shall be in compliance with the provisions of this Article within 90 days after the effective date of this Article.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5.8 (sections 17375–17379.1) and section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17376. Definitions.

For the purposes of this Article:

(a) "Air District" means Air Pollution Control District or Air Quality Management District.

(b) "Disposal" means:

(1) final deposition of nonhazardous ash onto land.

(2) stockpiling of nonhazardous ash onto land for a combined period of time greater than six months when located for use at the site of a transfer/processing operation(s) unless the RWQCB in consultation with the enforcement agency authorizes nonhazardous ash to remain within the operations area for a period of time greater than six months.

(3) disposal does not include the use of nonhazardous ash for cover material at a solid waste landfill. Notwithstanding this section, use of nonhazardous ash as a cover material shall still require approval for use pursuant to Title 27 California Code of Regulations section 20680 and may require additional approvals from other governmental agencies, including, but not limited to RWQCB and Air Districts.

(4) disposal does not include the use of nonhazardous ash for a reclamation project as defined in section 17376(m).

(5) disposal does not include the use of nonhazardous ash for snow and ice control, roadbase/subbase, walk areas, parking areas, airport runways, trails, dairy or feedlot soil stabilization, structural fill, sludge/manure/waste stabilizing material, compost mineral filler, smelter flux, blending in a soil product, and similar uses in accordance with Public Resources Code section 40180. Nonhazardous ash used for these purposes is not subject to the requirements of this Article. Nothing in this section precludes the enforcement agency or the CIWMB from inspecting any of the activities listed in this subdivision to verify that the activity qualifies for this exception from the definition of disposal.

(6) disposal does not include land application of nonhazardous ash as defined in section 17376(e).

(7) Should the enforcement agency have information that a nonhazardous ash handler is engaging in other activities that are subject to this Article, the burden of proof shall be on the land owner or operator to demonstrate otherwise.

(c) "Fully Enclosed Structure" means either a building with a roof and walls that prevent rain and wind from affecting the material, or covered container.

(d) "Generator" means the nonhazardous ash producer.

(e) "Land Application" means the application of nonhazardous ash to forest, agricultural, and range land in accordance with California Department of Food and Agriculture requirements for a beneficial use as authorized by Food and Agricultural Code section 14501 et seq. Land application does not constitute disposal and is not subject to the requirements of this Article.

(f) "Manufacturing" means using nonhazardous ash as a raw material in making a finished product that is distinct from nonhazardous ash. Such finished products include but are not limited to cement and concrete products, asphalt, blasting grit, roofing granules and tiles, wallboard, bricks, vitrified clay pipe, stucco and decorative rock. Nonhazardous ash used in manufacturing is not subject to the requirements of this Article. Should the enforcement agency have information that a nonhazardous ash manufacturer is engaging in other activities that are subject to this Article, the burden of proof shall be on the land owner or operator to demonstrate otherwise.

(g) "Nonhazardous Ash" means the nonhazardous residue from the combustion of material or the hazardous residue which may be managed as a nonhazardous waste in accordance with Title 22 California Code of Regulations section 66260.200(f) or 66260.210. The classification of a waste as hazardous or nonhazardous is made pursuant to Title 22 California Code of Regulations section 66260.200.

(h) "Nonhazardous Ash Disposal/Monofill Facility" or "Facility" means a facility that handles only nonhazardous ash for purposes of disposal and is not a landfill pursuant to Public Resources Code section 40195.1.

(i) "Nonhazardous Ash Transfer/Processing Operation" or "Operation" means an operation that handles only nonhazardous ash for purposes of transfer, treatment, or storage. This definition does not include transformation, biomass conversion, or other incineration facilities.

(j) "Operations Area" means the following areas within the boundary of an operation or facility that are subject to this Article, although the boundary may or may not be the same as the property boundary:

(1) equipment management area, including cleaning, maintenance, and storage areas;

(2) stockpiling areas for nonhazardous ash;

(3) transfer and/or processing and/or disposal areas.

(k) "Operator" means the land owner or other person who, through a lease, franchise agreement or other contract with the land owner is legally responsible for all of the following:

(1) transfer/processing operations or disposal;

(2) complying with all applicable federal, state and local requirements relating to the operation;

(3) the design, construction, and physical operation of a transfer/processing operation or disposal/monofill facility;

(4) operations site restoration of a transfer/processing operation or disposal/monofill facility.

(*l*) "Owner" means the person or persons who own, in whole or in part, a nonhazardous ash transfer/processing operation, disposal/monofill facility, or the land on which it is located.

(m) "Reclamation Project" means the use of nonhazardous ash in accordance with the requirements of the Office of Mine Reclamation of the Department of Conservation as authorized by Public Resources Code section 2770 et seq. Reclamation projects do not constitute disposal and is not subject to the requirements of this Article.

(n) "RWQCB" means the Regional Water Quality Control Board.

(o) "Site" means the operations area.

(p) "Treatment" means any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of nonhazardous ash. Treatment may also include the removal or reduction of harmful properties or characteristics for any purpose including, but not limited to, material recovery or reduction in volume.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40180, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17377.0. Regulatory Tiers for Nonhazardous Ash Operations and Facilities.

Sections 17377.1 through 17377.3 set forth the regulatory tier requirements (commencing with section 18100) that apply to specified types of nonhazardous ash operations and facilities. These requirements are summarized in Table 1.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

Table 1
NONHAZARDOUS ASH OPERATIONS AND FACILITIES
PLACEMENT INTO THE REGULATORY TIERS

Not Subject to Article 5.8	*Excluded Tier*	*Enforcement Agency Notification Tier*	*Standardized Tier*
Stockpiling as Specified in Section 17376(b)(2)	Transfer/Processing as Specified in Section 17377.1	Transfer/Processing Operations as Specified in Section 17377.2	Disposal/Monofill as Specified in Section 17377.3
Daily Cover as Specified in Section 17376(b)(3)	Weathertight Storage as Specified in Section 17377.1		
Uses Specified in Section 17376(b)(5)			
Land Application as Defined in Section 17376(e)			
Manufacturing as Defined in Section 17376(f)			
Reclamation Projects as Defined in Section 17376(m)			

There are no operations or facilities placed within the Registration and Full Permit tiers within this Article.

§ 17377.1. Excluded Operations.

The solid waste handling operations and facilities listed in this section do not constitute nonhazardous ash transfer/processing operations, or disposal/monofill facilities for the purposes of this Article, and are not required to meet the requirements set forth herein.

(a) Transfer/processing operations of nonhazardous ash are excluded from the requirements of this Article when the only activity is:

(1) the transfer/processing from land owned by a single nonhazardous ash generator source or leased by the generator, its parent, or subsidiary, to property owned or leased by the same generator, its parent, or subsidiary; or,

(2) storage within a fully enclosed weathertight structure.

(b) Nothing in this section precludes the enforcement agency or the CIWMB from inspecting an excluded operation or facility to verify that the operation or facility is being conducted in a manner that qualifies as an excluded operation or facility, or from taking any appropriate enforcement action.

(c) Should the enforcement agency have information that a nonhazardous ash operation is not excluded in accordance with this section, the burden of proof shall be on the land owner or operator to demonstrate otherwise.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17377.2. Nonhazardous Ash Transfer/Processing Operations.

(a) All operators of nonhazardous ash transfer/processing operations, except as otherwise provided in this Article, shall comply with the Enforcement Agency Notification requirements set forth in the California Code of Regulations, Title 14, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18103).

(b) In addition to the requirements of subdivision (a), the following statement shall be included in the enforcement agency notification and signed by the operator: "The undersigned certify under penalty of perjury that the information in this document and all attachments are true and correct to the best of my knowledge, and is being executed in accordance with the requirements of the California Code of Regulations, Title 14, Division 7, Chapter 3, Article 5.8 (commencing with section 17375). I certify that the ash as represented in this document is nonhazardous and from a nonhazardous feedstock as defined in section 17376(g) and is to be managed in accordance with this notification. I am aware that there are significant penalties for submitting false or misleading information in this certification, including the possibility of fine or imprisonment, or both."

(c) A new Enforcement Agency Notification is required any time there are changes to information required by this section.

(d) These operations may be inspected by the enforcement agency as necessary for the protection of public health, safety and the environment.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17377.3. Nonhazardous Ash Disposal/Monofill Facilities.

(a) All nonhazardous ash disposal/monofill facilities, shall obtain a Standardized Nonhazardous Ash Solid Waste Facility Permit pursuant to the requirements of the California Code of Regulations, Title 14, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18105).

(b) The enforcement agency shall include only those terms and conditions, and no others, contained in CIWMB Form 98 (new 7/96) Standardized Nonhazardous Ash Solid Waste Facility Permit, set forth in Appendix A in this Division.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17378.0. Applicability of State Minimum Standards for Nonhazardous Ash Operations and Facilities.

Sections 17378.1 through 17378.3 set forth the minimum standards that apply to all types of nonhazardous ash operations and facilities. Approvals, determinations and other requirements which the enforcement agency is authorized to make under Article 5.8 shall be provided in writing to the operator. The operator shall maintain a copy of these approvals in addition to those records identified in section 17379.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17378.1. Siting on Landfills.

(a) Nonhazardous ash operations and facilities or portions thereof, located atop closed solid waste landfills shall meet postclosure land use requirements pursuant to Title 27 California Code of Regulations section 21190.

(b) Operations and facilities or portions thereof, located on intermediate cover on a solid waste landfill shall locate operations areas on foundation substrate that is stabilized, either by natural or mechanical compaction, to minimize differential settlement, ponding, soil liquefaction, or failure of pads or structural foundations.

(c) Operations and facilities or portions thereof, located on intermediate cover on a solid waste landfill shall be operated in a manner that will not interfere with the operations of the landfill or with the closure or postclosure maintenance of the landfill.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17378.2. General Design Requirements.

(a) The design of a new nonhazardous ash transfer/processing operation or disposal/monofill facility shall utilize expert advice, as appropriate, from persons competent in engineering, architecture, landscape design, traffic engineering, air quality control, and design of structures.

(b) Each nonhazardous ash transfer/processing operation or nonhazardous ash disposal/monofill facility design shall be based on appropriate data regarding the expected service area, anticipated nature and quantity of nonhazardous ash to be received, climatological factors, physical settings, adjacent land use (existing and planned), types and number of vehicles anticipated to enter the operation or facility, adequate off-street parking facilities for transfer vehicles, drainage control, the hours of operation and other pertinent information. If the operation or facility is to be used by the general public, the design shall take account of safety features that may be needed to accommodate such public use.

(c) The operation or facility shall be designed in such a manner as to restrict the unloading area to as small an area as practicable, provide adequate control of windblown material, and minimize the creation of nuisances at the operation or facility. Other factors that shall be taken into consideration are: dust control, noise control, public safety, and other pertinent matters related to the protection of public health.

(d) Nonhazardous ash storage containers that are considered weathertight shall be durable, easily cleanable, designed for safe handling, and constructed to prevent loss of wastes from the equipment during storage. Such equipment shall be nonabsorbent and leak-resistant. Unloading areas shall be easily cleanable, designed for safe handling and constructed to prevent loss of nonhazardous ash.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17378.3. Operating Standards.

Each operator of a nonhazardous ash transfer/processing operation or disposal/monofill facility shall meet the following requirements:

(a) All activities at the operation or facility shall be conducted in a manner that minimizes nuisances, noise impacts, or other public health, safety and environmental hazards.

(b) Unauthorized human or animal access to the operation or facility shall be prevented.

(c) Traffic flow into, on, and out of the operation or facility shall be controlled in a safe manner.

(d) The operator shall take adequate measures to minimize and prevent safety hazards due to obscured visibility at the operation or facility.

(e) Drainage shall be controlled at operations and facilities to protect the public health and safety and to prevent interference with the operation.

(f) All operations and facilities open for public business shall post legible signs at all public entrances that include the following:

(1) name of operation or facility,

(2) name of the operator,

(3) hours of operation,

(4) a statement that only nonhazardous ash will be accepted, and

(5) phone number where operator or designee can be reached in case of an emergency.

(g) The operator shall provide telephone or radio communication capability for emergency purposes.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17379.0. General Record Keeping Requirements.

Each operator of a nonhazardous ash transfer/processing operation or disposal/monofill facility shall meet the following requirements:

(a) All records required by this Article shall be kept by the operator in one location and be accessible for five (5) years and shall be made available for inspection by authorized representatives of the CIWMB, enforcement agency, and other duly authorized regulatory and enforcement agencies during normal working hours. The operator shall submit copies of records to the enforcement agency upon request. An alternative schedule of record submittal may be approved by the enforcement agency.

(b) The operator shall maintain a daily log or file of special occurrences encountered during operations and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Special occurrences may include: fires, injury and property damage, accidents, explosions, discharge of hazardous or other waste not permitted, flooding and other unusual occurrences.

(c) The operator shall record any written public complaints received by the operator, including:

(1) the nature of the complaint,

(2) the date the complaint was received,

(3) if available, the name, address, and telephone number of the person or persons making the complaint,

(4) any actions taken to respond to the complaint.

(d) The operator shall record the date, generator source, and quantity of nonhazardous ash accepted.

(e) The operator shall maintain records of weights or volumes handled in a manner and form approved by the enforcement agency so as to be sufficiently accurate for overall planning and control purposes.

(f) Transfer/processing facility operators shall record the quantity of nonhazardous ash leaving the operations.

(g) The disposal/monofill facility operator shall also record the name of all transfer/processing operations where the nonhazardous ash was located prior to receipt by the operator and the dates the nonhazardous ash was received at each of these operations and removed.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 17379.1. Nonhazardous Ash Operation and Facility Restoration.

All nonhazardous ash transfer/processing operations and disposal/monofill facilities shall meet the following requirements:

(a) The operator shall provide the enforcement agency written notice of intent to perform site restoration, at least 30 days prior to beginning site restoration.

(b) The operator(s) and owner(s) shall provide site restoration necessary to protect public health, safety, and the environment.

(c) The operator shall ensure that the following site restoration procedures are performed upon completion of operation and termination of service:

(1) the operation or disposal/monofill facility grounds, excluding the disposal area, shall be cleaned of all nonhazardous ash, construction scraps, and other materials related to the operation or disposal/monofill facility, and these materials legally recycled, reused, or disposed of;

(2) all machinery shall be cleaned of nonhazardous ash prior to removal from the facility;

(3) all remaining structures shall be cleaned of nonhazardous ash.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

Article 5.9. Construction and Demolition and Inert Debris Transfer/Processing Regulatory Requirements

§ 17380. Authority and Scope.

(a) Article 5.9 sets forth permitting requirements, tier requirements, and minimum operating standards for operations and facilities that receive, store, handle, transfer, or process construction and demolition (C&D) debris and inert debris, as defined herein. C&D debris and inert debris are specific types of solid waste that present a different potential threat to public health and safety and the environment than typical municipal solid waste, thus, can be handled with different regulatory oversight. This Article places operations and facilities that handle C&D debris and inert debris into the board's tiers to provide appropriate regulatory oversight to protect public health and safety and the environment.

(b) This Article is not applicable to operations and facilities that are wholly governed by regulations elsewhere in this Chapter. Operations and facilities that receive, store, handle, transfer, or process construction and demolition debris or inert debris that is commingled with solid waste that does not meet the definition of C&D debris or inert debris shall be regulated as transfer/processing operations or facilities pursuant to Articles 6.0 through 6.35, inclusive, of this Chapter.

(c) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code (PRC), as amended. These regulations should be read together with the Act.

(d) Nothing in this Article limits or restricts the power of any Federal, State, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict local governments from promulgating laws which are as strict as or stricter than the regulations contained in this Article. However, no local government may promulgate laws which are inconsistent with the provisions of this Article.

(e) No provision in this Article shall be construed as relieving any owner, or operator from obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports, or other requirements of other regulatory or enforcement agencies, including, but not limited to, local health agencies, Regional Water Quality Control Boards, Department of Toxic Substances Control, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(f) No provision of this Article is intended to affect the rights or duties of any party to, or in any way influence the interpretation of, any franchise agreement between a local government and its franchisee, any other agreement among any parties, or any local ordinance with respect to any aspect of solid waste handling, including without limitation solid waste collection, transportation, processing, and storage, and solid waste disposal.

(g) This Article does not apply to persons who generate C&D debris or inert debris in the course of carrying out construction, remodeling, repair, demolition or deconstruction of buildings, roads and other structures (collectively, "construction work") at the site of the construction work or to persons who own the land, buildings and other structures that are the object of the construction work, provided that such persons do not accept at the site any C&D debris or inert debris that is generated at any other location, unless it will be used in the construction work, and provided further that such persons do not allow C&D debris or inert debris, other than C&D debris or inert debris that is used in the construction work, to remain on the site of the construction work after the construction work is completed. For example, public works agencies constructing roads and bridges, road repair, airport runway construction, bridge and roadway work, levee work, flood control work, or landslide debris clean-up, and public or private contractors demolishing or constructing buildings are not subject to these regulations during the course of the construction work.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5.9 (sections 17380–17386) and section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17380.1. Purpose.

(a) It is the board's intent in adopting this Article to encourage the recycling and reuse of C&D debris and inert debris that may otherwise be disposed in a solid waste disposal facility.

(b) These regulations are intended to provide a sufficient level of information and oversight to ensure that the receipt, storage, handling, transfer, and processing of C&D debris and inert debris will be conducted in a manner which meets the purposes of the Act while protecting public health, safety and the environment.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020, and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17381. Definitions.

For the purposes of this Article, the following definitions shall apply. Additional definitions and related provisions that apply to this Article are found at California Code of Regulations (CCR), Title 14, Division 7, Chapter 3.0, Article 6.0, sections 17402 and 17402.5, and Article 4, section 17225 et seq.

(a) "Active Compost" as set forth in CCR, Title 14, Division 7, Chapter 3.1, Article 1, section 17852.

(b) "C&D" means Construction and Demolition debris.

(c) "CDI" means any combination of Construction and Demolition debris and Inert debris.

(d) "Compostable Material" means any organic material that when accumulated may become active compost.

(e) "Construction and Demolition Debris", or "C&D Debris" " is solid waste that is a portion of the waste stream defined as "construction and demolition wastes," as defined in Section 17225.15 of Article 4 of this Chapter, and means source separated or separated for reuse solid waste and recyclable materials, including commingled and separated materials, that result from construction work, that are not hazardous, as defined in CCR, Title 22, section 66261.3 et seq., and that contain no more than 1%

putrescible wastes by volume calculated on a monthly basis and the putrescible wastes do not constitute a nuisance, as determined by the EA.

(1) C&D debris includes only the following items which meet the above criteria:

(A) components of the building or structure that is the subject of the construction work including, but not limited to, lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, plastic pipe, concrete, fully cured asphalt, heating, ventilating, and air conditioning systems and their components, lighting fixtures, appliances, equipment, furnishings, and fixtures;

(B) tools and building materials consumed or partially consumed in the course of the construction work including material generated at construction trailers, such as blueprints, plans, and other similar wastes;

(C) cardboard and other packaging materials derived from materials installed in or applied to the building or structure or from tools and equipment used in the course of the construction work; and

(D) plant materials resulting from construction work when commingled with dirt, rock, inert debris or C&D debris.

(2) C&D debris expressly excludes, commingled office recyclables and, except as provided in subdivision 17381 (e) above, commingled commercial solid waste and commingled industrial solid waste as they are defined in Title 27, CCR section 20164.

(3) Notwithstanding anything to the contrary in this Article, C&D debris includes material, whether or not from construction work, that is generally similar to C&D debris and that is separated for reuse, that is not hazardous, that contains no putrescible wastes and that can be processed without generating any residual, provided that the material is generated by an activity that is similar to, or is directly or indirectly related to, construction work, including without limitation: manufacturing materials for use in construction work, such as wood products, clay or ceramic products, plumbing systems, electrical equipment, metal work and HVAC systems.

(f) "Construction and Demolition Wood Mulch" or "C&D Mulch" means source separated wood waste that is not compostable material (C&D mulch feedstock), including that portion of C&D debris that is lumber or wood, which has been mechanically reduced in size. C&D mulch feedstock does not include food material, animal material, biosolids, mixed solid waste, chromated copper arsenate (CCA) pressure treated wood, wood containing lead–based paint, or mixed C&D debris.

(g) "Construction Work" means construction, remodeling, repair, demolition or deconstruction of buildings, other structures, roads, parking lots, and similar paved or covered surfaces.

(h) "Emergency Construction and Demolition/Inert Debris Processing Operation" means a site that is established due to a proclamation of a state of emergency or local emergency as provided in CCR, Title 14, Division 7, Chapter 3.0, Article 3, sections 17210.1(j) and (k),

(i) "Fully Cured Asphalt" means that the material must be at ambient temperature, be substantially hardened and be inelastic.

(j) "Handling" means the receipt, collection, transportation, storage, transfer, or processing of solid waste and recyclable materials.

(k) "Inert Debris" means solid waste and recyclable materials that are source separated or separated for reuse, do not contain hazardous waste (as defined in CCR, Title 22, section 66261.3 et. seq.) or soluble pollutants at concentrations in excess of applicable water quality objectives and do not contain significant quantities of decomposable waste. Inert debris may not contain more than 1% putrescible wastes by volume calculated on a monthly basis and the putrescible wastes shall not constitute a nuisance, as determined by the EA. Gravel, rock, soil, sand and similar materials, whether processed or not, that have never been used in connection with any structure, development, or other human purpose are not inert debris and may be commingled with inert debris.

(1) "Type A inert debris" includes but is not limited to concrete (including fiberglass or steel reinforcing bar embedded in the concrete), fully cured asphalt, glass, fiberglass, asphalt or fiberglass roofing shingles, brick, slag, ceramics, plaster, clay and clay products. Type A inert debris is waste that does not contain soluble pollutants at concentrations in excess of water quality objectives and has not been treated in order to reduce such pollutants. The board, upon consultation with the State Water Resources Control Board, will determine on a case by case basis whether materials not listed in this subdivision qualify as Type A inert debris.

(2) "Type B inert debris" is solid waste that is specifically determined to be inert by the applicable RWQCB, such as treated industrial wastes and de–watered bentonite–based drilling mud, but excluding Type A inert debris.

(*l*) "Inert Debris Engineered Fill Operation" means a disposal activity exceeding one year in duration in which fully cured asphalt, uncontaminated concrete (including steel reinforcing rods embedded in the concrete), brick, ceramics, clay and clay products, which may be mixed with rock and soil, are spread on land in lifts and compacted under controlled conditions to achieve a uniform and dense mass which is capable of supporting structural loading as necessary, and having other characteristics appropriate for an end use approved by all governmental agencies having jurisdiction (e.g., roads, building sites, or other improvements) where an engineered fill is required to facilitate productive use of the land. The engineered fill shall be constructed and compacted in accordance with all applicable laws and ordinances and shall be certified by a Civil Engineer, Certified Engineering Geologist, or similar professional licensed by the State of California.

(m) "Inert Debris Processing Facility" means a site that receives 1500 tons or more per operating day of any combination of Type A and Type B inert debris, or any amount of Type B inert debris, for storage, handling, transfer, or processing.

(n) "Inert Debris Type A Disposal Facility" means a site where only Type A inert debris is disposed to land. Inert debris Type A disposal facilities do not include inert debris engineered fill operations.

(o) "Inert Debris Type A Processing Operation " means a site that receives less than 1500 tons per operating day of only Type A inert debris for storage, handling, transfer, or processing.

(p) "Large Volume C&D Wood Debris Chipping and Grinding Facility" means a site that receives 500 tons per operating day or more of C&D mulch feedstock for purposes of processing it into C&D mulch.

(q) "Large Volume Construction and Demolition/Inert (CDI) Debris Processing Facility" means a site that receives 175 tons or more of any combination of C&D debris and Type A inert debris per operating day for the purposes of storage, handling, transfer, or processing.

(r) "Material Production Facility" means a facility that primarily handles raw materials to produce a new product that is a rock product operation (i.e., an "aggregate" operation), a hot mix asphalt plant, or a concrete, concrete product or a Portland cement product manufacturing facility.

(s) "Medium Volume C&D Wood Debris Chipping and Grinding Facility" means a site that receives at least 200 tons per operating day and less than 500 tons per operating day of C&D mulch feedstock for purposes of processing it into C&D mulch.

(t) "Medium Volume Construction and Demolition/Inert (CDI) Debris Processing Facility" means a site that receives at least 25 tons per operating day and less than 175 tons per operating day of any combination of C&D debris and Type A inert debris for the purposes of storage, handling, transfer, or processing.

(u) "Physical Contaminants" means human–made inert products contained within feedstocks, including, but not limited to, glass, metal, and plastic.

(v) "Processing" means controlled separation, recovery, volume reduction, or recycling of solid waste including, but not limited to, organized, manual, automated, or mechanical sorting; chipping, grinding, shredding or baling; the use of vehicles for spreading of waste for the purpose of recovery; and the use of conveyor belts, sorting lines or volume reduction equipment.

(w) "Putrescible Wastes" means solid wastes that are capable of being decomposed by micro–organisms with sufficient rapidity as to cause nuisances because of odors, vectors, gases or other offensive conditions, and include materials such as, but not limited to food wastes, offal and dead

animals. The EA shall determine on a case–by–case basis whether or not a site is handling putrescible wastes.

(x) "Residual" means the solid waste destined for disposal, further transfer/processing as defined in section 17402(a)(30) or (31) of Article 6.0, or transformation which remains after processing has taken place and is calculated in percent as the weight of residual divided by the total incoming weight of materials. Notwithstanding, for purposes of this Article, "residual" excludes any inert debris that is destined for or disposed in an inert debris engineered fill operation. Further notwithstanding, for purposes of this Article, "further transfer/processing" does not include processing that occurs at a CDI recycling center or an inert debris recycling center, as described in Section 17381.1(a) of this Article, or at a recycling center as defined at Section 17402.5(d) of Article 6.0 of this Chapter.

(y) "Separated for Reuse" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, and includes materials that have been "source separated".

(z) "Site" means the area where the handling of solid waste and/or recyclable materials occurs at a recycling center, CDI debris processing operation or facility, inert debris processing operation or facility, or C&D wood debris chipping and grinding operation or facility.

(aa) "Site Restoration" means removing unprocessed or processed solid waste and recyclable material from the site to allow reuse of the property.

(bb) "Small Volume C&D Wood Debris Chipping and Grinding Operation" means a site that receives less than 200 tons per operating day of C&D mulch feedstock for purposes of processing it into C&D mulch.

(cc) "Small Volume Construction and Demolition/Inert (CDI) Debris Processing Operation" means a site that receives less than 25 tons of any combination of C&D debris and Type A inert debris per operating day for the purposes of storage, handling, transfer, or processing.

(dd) "Source Separated" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(ee) "Storage" means the holding or stockpiling of processed or unprocessed C&D debris, C&D mulch, inert debris or recyclable materials for a temporary period, at the end of which the material either is recycled or is transferred elsewhere. Storage of C&D debris, C&D mulch, inert debris or recyclable materials for periods exceeding the limits set in this Article is deemed to be disposal and shall be regulated as set forth in the Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste (commencing at CCR, Title 27, Division 1, Subdivision 1, Chapter 1, Article 1, section 20005).

(ff) "Vector" includes any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17381.1. Activities That Are Not Subject to the Construction and Demolition/Inert Debris Regulatory Requirements.

(a) A site that receives only construction and demolition debris and inert debris (CDI) and which meets the requirements of this section shall be classified as a CDI recycling center. A site that receives only inert debris and which meets the requirements of this section shall be classified as an inert debris recycling center. CDI recycling centers and inert debris recycling centers shall not be subject to any other requirements of this Article except as specified in this section.

(1) The CDI debris that a CDI recycling center receives shall have been separated at the point of generation.

(A) For the purposes of this section, "separated at the point of generation" means that the material has been separated from the solid waste stream by the generator of that material or by a processor prior to receipt at a CDI recycling center and has not been commingled with other solid waste or recyclable materials. For example, each material type must be transferred in separate containers to the recycling center. Notwithstanding, cardboard, lumber and metal may be commingled in a single container.

(2) An inert debris recycling center shall receive only Type A inert debris that is source separated or separated for reuse. The inert debris may be commingled in a single container.

(b) CDI recycling centers and inert debris recycling centers shall meet the following requirements:

(1) The residual shall be less than 10% by weight of the amount of debris received at the site, calculated on a monthly basis. Recycling center operators may report their residual percentage to the EA and the board on Form CIWMB 607 (see Appendix A).

(2) The amount of putrescible wastes in the CDI debris received at the site shall be less than 1% by volume of the amount of debris received at the site, calculated on a monthly basis, and the putrescible wastes shall not constitute a nuisance, as determined by the EA.

(c) Chipping and grinding of any material, or the receipt of chipped and ground material, is prohibited at CDI recycling centers.

(d) The following storage time limits apply to CDI recycling centers:

(1) CDI debris stored for more than 30 days that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section 18304.

(2) CDI debris that has been processed and sorted for resale or reuse, but remains stored on site for more than one year, shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section 18304.

(3) Storage time limits do not apply to CDI recycling centers where a financial assurance mechanism pursuant to section 17384(c) has been approved by the board.

(4) At the EA's discretion, storage time limits for sorted and processed materials may be extended to the time specified in a land use entitlement for the site that has an express time limit for the storage of materials.

(5) CDI recycling center storage time limits may be extended for a specified period, if the operator submits to the EA a storage plan as described in section 17384(b) and if the EA finds, on the basis of substantial evidence, that the additional time does not increase the potential harm to public health, safety and the environment. The EA may consult with other public agencies in making this determination. The extended storage term, any applicable conditions the EA imposes and the EA's findings shall be in writing.

(e) The following storage limits apply to inert debris recycling centers:

(1) Inert debris stored for more than 6 months that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section 18304.

(2) Inert debris that has been processed and sorted for resale, or reuse, but remains stored on site for more than 18 months, shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section 18304.

(3) Storage time limits do not apply to Type A inert debris recycling centers which are located at an inert debris engineered fill operation, an inert debris Type A disposal facility, or at a material production facility.

(4) Storage time limits do not apply to Type A inert debris recycling centers where a financial assurance mechanism pursuant to section 17384(c) has been approved by the board.

(5) At the EA's discretion, storage limits for sorted and processed materials may be extended to the time specified in a land use entitlement for the site that has an express time limit for the storage of materials.

(6) Inert debris recycling center storage limits may be extended for a specified period, if the operator submits to the EA a storage plan as described in section 17384(b) and if the EA finds, on the basis of substantial evidence, that the additional time does not increase the potential harm to public health, safety and the environment. The EA may consult with other public agencies in making this determination. The extended storage term, any applicable conditions the EA imposes and the EA's findings shall be in writing.

(f) Nothing in this section precludes the EA or the board from inspecting a site to verify that it is and has been operating in a manner that meets the requirements of this section, or from taking any appropriate enforcement action, including the use of a Notice and Order as provided in section 18304.

(g) In evaluating whether or not a particular site is in compliance with this section, the EA shall, among other things, do the following:

(1) If the EA has reason to believe that each load of debris received at a recycling center is not separated at the point of generation, is not source separated or is not separated for reuse, as applicable, or that the residual exceeds 10% of the total debris received per month, or that the amount of putrescible wastes exceeds 1% by volume of the total debris received per month, or material is being stored in excess of the applicable storage limits, or that the site is not in compliance with any other requirement in this section, the EA may require the owner or operator to provide evidence that the recycling center is in compliance. The burden of proof shall be on the owner and operator of the recycling center to demonstrate it is in compliance.

(2) At the time that the EA requires a recycling center to provide evidence that it is in compliance with this section, the EA shall provide the owner and operator of the recycling center a written description of the information that has caused the EA to believe that the recycling center is not in compliance. Notwithstanding, the EA shall not be required to identify the name or other identifying information regarding any person(s) who has complained about the recycling center.

(h) Sites which do not meet the applicable requirements of this section do not qualify as recycling centers and shall comply with this Article and all laws and regulations applicable to them. The burden of proof shall be on the owner and operator of a site to demonstrate that the activities at the site are not subject to the requirements of this Article.

NOTE: Authority cited: Section 40502, 43020 and 43021, Public Resources Code. Reference: 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17381.2. Regulatory Tiers Placement for CDI Debris and Inert Debris Processing Operations and Facilities.

Construction & Demolition and Inert Debris Tier Placement

Not Subject To Article 5.9	*Excluded Operations Tier Section 17382*	*EA Notification Tier*	*Registration Tier*	*Full Solid Waste Facility Permit*	
• CDI Recycling Centers Section 17381.1 • Alternative Daily Cover at solid waste disposal facilities per 27 CCR 20680 • Wood waste facilities pursuant to PRC 40195.1(b) • Inert Debris Recycling Centers Section 17381.1 • See Section 17402.5 for other Activities Not Subject to the Regulations • Road building and specified public works activities Section 17380(g)	• Containers used to store C&D debris at the place of generation • 15 cubic yards or less of separated for reuse debris • Specified chipping and grinding activities • Specified Grading Activities	• Small Volume CDI debris processing operations (less than 25 tons per day — Section 17383.4 • Small Volume C&D Wood Debris Chipping and Grinding Operations (less than 200 tons per day) — Section 17383.3 • Emergency CDI processing operations — Section 17383.8 • Inert debris Type A only processing operations (less than 1500 tons per day) Section 17383.6	• Medium Volume CDI debris processing facilities (25 tons per day to up to less than 175 tons per day) Section 17383.3 • Medium Volume C&D Wood Debris Chipping and Grinding Facilities (200 to <500 tons per day) — Section 17383.3	• Large Volume CDI debris processing facilities (175 tons per day or more) — Section 17383.5 • Inert Debris Processing Facility (1500 tons per day or more) of any combination of Type A and Type B inert debris or any amount of Type B inert debris Section 17383.7 Large Volume C&D Wood Debris Chipping and Grinding Facilities (500 tons per day or more) — Section 17383.3	PROCESSING ACTIVITIES

NOTE: THERE ARE NO FACILITIES PLACED WITHIN THE STANDARDIZED TIER

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17382. Excluded Activities.

(a) The following activities do not constitute CDI debris processing, inert debris processing, or chipping and grinding operations or facilities for the purposes of this Article and are not required to meet the requirements set forth herein:

(1) Containers used to store C&D debris or inert debris at the place of generation.

(2) Locations where 15 cubic yards or less per day of separated for reuse material is handled.

(3) Grading or clearing of land that is consistent with local ordinances.

(4) Chipping and grinding of lumber or other wood material which meet any of the following criteria;

(A) The chipping and grinding activity handles materials derived from and applied to lands owned or leased by the same person, including a parent or subsidiary of a corporate owner; or

(B) Handling any combination of green material, additives, amendments, compost, or chipped and ground material that does not exceed 500cubic yards on–site at any one time; or

(C) The activity is located at the site of biomass conversion as defined in PRC section 40106 and is for use in biomass conversion at that site; or

(D) The activity is part of a silvicultural operation or a wood, paper, or wood product manufacturing operation; or

(E) The storage of bagged chipped and ground material.

(b) Nothing in this section precludes the EA or the board from inspecting an excluded activity to verify that the activity is being conducted in a manner that qualifies as an excluded activity, or from taking any appropriate enforcement action, including the use of a Notice and Order. The burden of proof shall be on the owner and operator to demonstrate that the activities are excluded pursuant to this section.

NOTE: Authority cited: 40502, 43020 and 43021, Public Resources Code. Reference: 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383. State Minimum Standards.

(a) This section sets forth minimum standards that apply to CDI debris processing, inert debris processing and C&D wood debris chipping and grinding operations and facilities.

(b) All small, medium and large CDI debris processing operations and facilities, inert debris processing operations and facilities and small, medium and large C&D wood debris chipping and grinding operations and facilities shall meet the State Minimum Standards requirements of CCR, Title 14, Division 7, Chapter 3.0, Article 6.2 and sections 17406.1, 17406.2 of Article 6.1 and 17414 of Article 6.3.

(c) In addition, medium and large CDI debris processing facilities, inert debris processing facilities and medium and large volume C&D wood debris chipping and grinding facilities shall meet the State Minimum Standards requirements of CCR, Title 14, Division 7, Chapter 3.0, Article 6.35.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020, 43021, 43200 and 43209, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.1. Multiple Wood Debris Chipping and Grinding Activities.

All operations and facilities that receive lumber or wood material and mechanically reduce the material in size are subject to regulation under either Chapter 3 (Minimum Standards for Solid Waste Handling and Disposal) or Chapter 3.1 (Composting Operations Regulatory Requirements) and shall be further regulated as follows: If multiple waste streams, such as C&D wood debris and compostable green material, are handled at one location or site as determined by the EA, the site shall be deemed a single site and shall comply with the permitting requirements of Chapter 3, Article 5.9, Article 6.0 or Chapter 3.1 as determined by the EA. All material handled at the site shall count toward determining the appropriate regulatory tier for the operation or facility. Notwithstanding the above, each separate activity will be required to meet the State Minimum Standards applicable to the specific waste stream being handled.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.2. Activities at Solid Waste Facilities.

(a) C&D wood debris chipping and grinding operations and facilities and CDI debris and inert debris processing operations and facilities are not required to obtain a separate permit or meet the notification requirements of this Article if the activity is occurring at a facility that has a full solid waste facilities permit and the permit authorizes the activity either through a specific condition in the permit or as a described and approved activity in a Report of Facility Information.

(b) Notwithstanding, C&D wood debris chipping and grinding activities when located at a solid waste facility which has a full solid waste facilities permit shall satisfy the requirements of sections 17383 and 17383.3 (b) through (k) except if material is used on site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.3. C&D Wood Debris Chipping and Grinding Operations and Facilities.

(a) C&D wood debris chipping and grinding operations and facilities conduct chipping and grinding activities to produce C&D mulch. Authorized chipping and grinding activities do not produce active compost, but mechanically reduce the size of lumber and other wood material to produce C&D mulch. The C&D wood debris chipping and grinding operation or facility shall satisfy the appropriate tier requirements. A small volume C&D wood debris chipping and grinding operation shall comply with the EA Notification requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100 et seq. A medium volume C&D wood debris chipping and grinding operation shall comply with the Registration Permit tier requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100 et seq. A large volume C&D wood debris chipping and grinding facility shall comply with the Full Permit tier requirements set forth in CCR, Title 27, Division 2, Subdivision 1, Chapter 4, commencing with section 21563. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals. Except as otherwise specified in this section, small volume C&D wood debris chipping and grinding activities shall comply with all requirements applicable to small volume CDI debris processing operations, medium volume C&D wood debris chipping and grinding facilities shall comply with all requirements applicable to medium volume CDI processing facilities, and large volume C&D wood debris chipping and grinding facilities shall comply with all requirements applicable to large volume CDI debris processing facilities.

(b) All of the following requirements for the storage and stockpiling of C&D mulch feedstock, material being processed and finished C&D mulch apply:

(1) Unprocessed feedstock may be stored on site prior to processing up to 30 days. Unprocessed feedstock stored for more than 30 days shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(2) C&D mulch shall be removed from the site within 90 days from processing. C&D mulch stored for more than 90 days shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(3) If the temperature of the unprocessed feedstock or C&D mulch reaches 50 degrees Celsius (122 degrees Fahrenheit), then the site shall be regulated as a compostable material handling operation or facility, as set forth in Chapter 3.1 commencing with Article 1, section 17850.

(4) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(5) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(c) All the following requirements for the inspection of C&D mulch feedstock apply:

(1) The feedstock shall undergo load checking to ensure that physical contaminants in the feedstock are reduced to no greater than 1% of total feedstock, by weight. Load checking shall include both visual observation of incoming loads of feedstock and load sorting to quantify the percentage of contaminating materials.

(2) A minimum of 1% of daily incoming feedstock volume or at least one truckload per day, whichever is greater, shall be inspected visually. If a visual load check indicates a contamination level is potentially greater than 1%, a representative sample shall be taken, physical contaminants shall be collected and weighed, and the percentage of physical contami-

nants determined. The load shall be rejected if physical contaminants are greater than 1% of total weight.

(3) Upon request of the EA, the operator shall take a representative sample of feedstock, shall collect and weigh physical contaminants, and shall calculate the percentage of physical contaminants in the sample.

(4) The operator shall take adequate measures through signage, training, load checking, detection systems, and/or chemical analysis to avoid incorporating any chromated copper arsenate (CCA) pressure treated wood and lead based painted materials into C&D mulch. Such contaminated feedstock shall be stored in a designated area for proper handling and disposition.

(5) The operator's employees shall be adequately trained to perform the activities specified in this section.

(d) Operations and facilities producing C&D mulch shall maintain all records demonstrating compliance with this section.

(e) All C&D wood debris chipping and grinding activities shall minimize odor impacts.

(f) The operator shall provide fire prevention, protection and control measures, including, but not limited to, temperature monitoring of windrows and piles, adequate water supply for fire suppression, and the isolation of potential ignition sources from combustible materials. Fire lanes shall be provided to allow fire control equipment access to all operation areas. These requirements are in addition to the requirement for a Fire Prevention, Control and Mitigation Plan described in sections 17386(a)(19), 18223(a)(19) and 18223.5(a)(20),

(g) If C&D debris other than C&D wood debris is accepted at the site, the site shall be regulated as a CDI processing operation or facility under this Article or under in the Transfer/Processing Regulatory requirements (commencing at section 17400), as appropriate.

(h) Should the EA have reason to believe that a C&D wood debris chipping and grinding material handler is engaging in other activities that constitute or are deemed to be disposal, the burden of proof shall be on the owner and operator of the site to demonstrate otherwise.

(i) Each operator of a small volume C&D wood debris chipping and grinding operation shall file with the EA, together with its application for an EA Notification, an Operation Plan (as more fully described in section 17386 of this Article). Each operator of a medium volume C&D wood debris chipping and grinding facility shall file with the EA, together with its application for a Registration Permit, a Facility Plan (as more fully described in Article 3.2, section 18223 of this Chapter). Each operator of a large volume C&D wood debris chipping and grinding facility shall file with the EA, together with its application for a Full Permit, a Facility Report (as more fully described in Article 3.2, section 18223.5 of this Chapter). The information contained in the Plan or Report shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(j) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(k) Each operator shall determine the weight of all material received at the operation or facility for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the operation or facility or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).
2. Change without regulatory effect amending subsection (a) filed 6–29–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 17383.4. Small Volume Construction and Demolition/Inert Debris Processing Operations.

All small volume CDI debris processing operations shall comply with the EA Notification requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100. These operations shall be inspected quarterly by the EA to verify compliance with minimum standards. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals. The operator shall specify the operation's boundary area in the operating record.

(a) CDI debris stored for more than 15 days that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section 18304.

(b) CDI debris that has been processed and sorted for resale or reuse, but remains stored on site for more than one year, shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(c) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(d) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(e) Residual material shall be removed from the site within 48 hours or at an alternate frequency approved by the EA.

(f) Each operator of a Small Volume CDI Processing Operation shall file with the EA, together with its application for an EA Notification, a Small Volume CDI Processing Operation Plan (as more fully described in Article 3.2, section 17386 of this Article). The information contained in the Plan shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(g) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(h) C&D Mulch that is not compostable material produced at a small volume CDI processing operation must meet all requirements of a small volume C&D wood debris chipping and grinding operation, including the storage limits.

(i) Each operator shall determine the weight of all material received at the operation for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the operation or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.5. Medium Volume Construction and Demolition/Inert Debris Processing Facilities.

All medium volume CDI debris processing facilities subject to this Article shall comply with the Registration Permit tier requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100 et seq..

(a) The amount of residual in the C&D debris and type A inert debris shall be less than 40 % of the amount of such material received by weight. The residual amount is calculated on a monthly basis. Facilities which do not meet the 40 % residual requirement of this subsection shall obtain a Full Permit and shall comply with the requirements applicable to a Large Volume CDI Debris Processing Facility. If the EA determines that a Medium Volume CDI Debris Processing Facility has exhibited a pattern and practice of failing to comply with the provisions of this subsection, the EA shall take appropriate enforcement action.

(b) CDI debris stored for more than 15 days that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(c) CDI debris that has been processed and sorted for resale or reuse, but remains stored on site for more than one year, shall be deemed to have

been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(d) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(e) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(f) Residual material shall be removed from the site within 48 hours or at an alternate frequency approved by the EA.

(g) Each operator of a medium volume CDI processing facility shall file with the EA, together with its application for a Registration Permit, a CDI Processing Facility Plan (as more fully described in Article 3.2, section 18223 of this Chapter). The information contained in the Plan shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(h) Medium volume CDI debris processing facilities shall be inspected monthly by the EA in accordance with PRC section 43218. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

(i) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(j) C&D Mulch that is not compostable material produced at a medium volume CDI processing operation must meet all requirements of a medium volume chipping and grinding operation, including the storage limits.

(k) If a medium volume CDI processing facility exceeds any combination of the following limitations, which are more fully described in this Section 17383.5, three (3) or more times within any two (2) year period which the EA determines constitutes a violation of this Article, the facility no longer qualifies for a Registration Permit under this section. Upon the third such violation, the EA shall notify the operator in writing that the facility no longer qualifies for a Registration Permit, and the operator must within 30 days apply for a Full Permit as if it were a large volume CDI processing facility pursuant to Section 17383.6. In addition, the EA shall issue a cease and desist order pursuant to Section 18304 directing, among other things, that the operator immediately cease accepting material at the site until the operator has demonstrated to the EA that it has corrected the violation and eliminated the cause of the violation. The limitations to which this subdivision applies are:

1. Maximum amount of residual specified in Subsection 17383.5(a).
2. Maximum tonnage received per day as specified in Subsection 17381(t)
3. Maximum amount of material on site as specified 17383.5(d).

(*l*) Each operator shall determine the weight of all material received at the facility for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the facility or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.6. Large Volume Construction and Demolition/Inert Debris Processing Facilities.

All large volume CDI debris processing facilities subject to this Article shall comply with the Full Permit tier requirements set forth in Title 27, CCR, Division 2, Subdivision 1, Chapter 4, commencing with section 21450.

(a) CDI debris stored for more than 15 days that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(b) CDI debris that has been processed and sorted for resale, or reuse, but remains stored on site for more than one year, shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(c) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(d) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(e) Residual material shall be removed from the site within 48 hours or at an alternate frequency approved by the EA.

(f) Each operator of a large volume CDI processing facility shall file with the EA, together with its application for a Full Permit, a Large Volume CDI Processing Facility Report (as more fully described in Article 3.2, section 18223.5 of this Chapter). The information contained in the Report shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(g) Large volume CDI debris processing facilities shall be inspected monthly by the EA in accordance with PRC section 43218. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

(h) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(i) C&D Mulch that is not compostable material produced at a large volume CDI processing operation must meet all requirements of a large volume C&D wood debris chipping and grinding operation, including the storage limits.

(j) Each operator shall determine the weight of all material received at the facility for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the facility or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).
2. Editorial correction inserting inadvertently omitted HISTORY 1 (Register 2003, No. 29).

§ 17383.7. Inert Debris Type A Processing Operations.

All inert debris Type A processing operations subject to this Article shall comply with the EA Notification requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0 and commencing with section 18100.

(a) Inert debris stored for more than 6 months that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(b) Inert debris that has been processed and sorted for resale or reuse, but remains stored on site for more than 18 months, shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(c) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(d) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(e) Residual material shall be removed from the site within 48 hours or at an alternate frequency approved by the EA.

(f) These operations shall be inspected by the EA to verify compliance with minimum standards. Inspections shall be conducted quarterly. To

the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

(g) The operator shall specify the operation's boundary area in the operating record.

(h) Each operator of an inert debris Type A processing operation shall file with the EA, together with its application for an EA Notification, an Inert Debris Type A Processing Operation Plan (as more fully described in Article 3.2, section 17386 of this Article). The information contained in the Plan shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(i) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(j) Each operator shall determine the weight of all material received at the operation for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the operation or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.8. Inert Debris Type A and Type B Processing Facilities.

All inert debris Type A and Type B processing facilities subject to this Article shall comply with the Full Permit tier requirements set forth in Title 27, CCR, Division 2, Subdivision 1, Chapter 4, commencing with section 21450.

(a) Inert debris stored for more than 6 months that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(b) Inert debris that has been processed and sorted for resale or reuse, but remains stored on site for more than 18 months, shall be deemed to have been unlawfully disposed, and therefore subject to enforcement action including the use of a Notice and Order as provided in section 18304.

(c) The maximum amount of material that may be stored on the site, including unprocessed material, material that is being processed, and material that has been processed, is that amount which is the product of 30 days multiplied by the maximum amount of incoming material permitted per day.

(d) Storage time limits may be extended in accordance with sections 17384 (a) (Land Use Entitlement), 17384 (b) (Storage Plan), and 17384(c) Financial Assurances of this Article.

(e) Residual material shall be removed from the site within 48 hours or at an alternate frequency approved by the EA.

(f) Each operator of an Inert Debris Type A and Type B Processing Facility shall file with the EA, together with its application for a Full Permit, an Inert Debris Type A and Type B Processing Facility Report (as more fully described in Article 3.2, Section 18223.5 of this Chapter). The information contained in the Report shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Chapter 5, Article 3.0, section 18101.

(g) Inert debris processing facilities shall be inspected monthly by the EA in accordance with PRC section 43218. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

(h) Where the public may have access to them, the debris piles and other piles of materials on site must be stable and otherwise configured so as to protect the public health and safety.

(i) Each operator shall determine the weight of all material received at the facility for handling and shall maintain records of the weight of materials in accord with State Minimum Standards. Weight shall be determined by the use of scales which may be located at the facility or off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

2. Change without regulatory effect amending subsection (f) filed 6–29–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 17383.9. Emergency Construction and Demolition/Inert Debris Processing Operations.

(a) All emergency CDI debris processing operations shall comply with the EA Notification requirements set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, section 18100 et. seq. Such operations may occur at locations which are not permitted solid waste facilities. These operations shall be inspected by the EA as necessary to verify compliance with minimum standards, but in no case less than monthly. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals. The operator shall specify the operation's boundary area in the operating record.

(b) In addition, the emergency CDI debris processing operations shall meet the following requirements:

(1) The land owner has certified his/her knowledge of the proposed activity and agrees to insure proper termination.

(2) The operation shall not exist for a period of time greater than 120 days from the date that the EA Notification is received by the EA. Upon receipt of the reports required by CCR, Title 14, Division 7, Chapter 3, Article 3, section 17210.5, the operation may continue for an additional period as specified by the EA to assist in the recovery and clean–up.

(3) The operation shall receive only C&D debris and Type A inert debris in any amounts that are generated by the event that caused the state of emergency,

(4) If the operation accepts, processes, or stores hazardous or household hazardous waste, the activities must be in compliance with requirements of the Department of Toxic Substances Control and other appropriate authorities or agencies.

(c) The emergency CDI debris processing operation shall cease operation should the EA determine that any of the following occurs:

(1) The emergency CDI debris processing operation is not being used exclusively to handle the CDI debris resulting from the state of emergency;

(2) The emergency CDI debris processing operation is no longer necessary in accordance with CCR, Title 14, Division 7, Chapter 3, Article 3, section 17210.2;

(3) The emergency CDI debris processing operation will cause or contribute to a public health, safety or environmental problem;

(4) The operator is not utilizing disaster debris diversion programs to the extent feasible.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17383.10. Public Hearing.

NOTE: Authority Cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).
2. Repealer filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 17384. Approval of Storage Time Limit Alternatives.

(a) At the EA's discretion, storage times for sorted and processed materials may be extended to the time specified in a land use entitlement for the site that has an express time limit for the storage of materials.

(b) Storage times at operations and facilities may be extended for a specified period, if the operator submits to the EA a storage plan as described herein and if the EA finds, on the basis of substantial evidence, that the additional time does not increase the potential harm to public health, safety and the environment. The EA may consult with other public agencies in making this determination. The extended storage term, any applicable conditions the EA imposes and the EA's findings shall be in writing. The operator must file amendments as necessary to maintain the accuracy of the storage plan. Failure to submit timely amendments may be cause for revocation of the storage limit extension. The storage plan must contain the following:

(1) Names of the operator and owner, and the key employee responsible for operation of the site;

(2) Describe the reason(s) for the storage limit extension;

(3) Describe the manner in which the material will be stored;

(4) Describe the manner in which activities are to be conducted at the facility during the period of the storage extension;

(5) Specify maximum site design capacity including the assumptions, methods, and calculations performed to determine the total site capacity;

(6) Provide information showing the types and the quantities of material to be stored. If tonnage was figured from records of cubic yards, include the conversion factor used;

(7) Identify transfer, recovery and processing equipment to be used on site, including classification, capacity and the number of units;

(8) Identify the planned method for final disposition of material stored at the site, including but not limited to materials being transferred to other facilities or operations for further processing, recycled materials, and solid waste.

(c) Storage times at operations, facilities and recycling centers may be extended if an operator provides proof of financial assurance pursuant to Title 27, Chapter 6, Subchapter 1, section 22240 et seq. satisfactory to the board for cleanup of any operation, facility or recycling center. The amount of financial assurance shall be based on the cost estimate, in current dollars, for removal and disposal of the debris by a third party as directed by the EA. A Clean Up Plan including a cost estimate shall be prepared by the operator using form CIWMB 643 and approved by the EA. Notwithstanding, an operator is not required to provide proof of financial assurance if the third party cost to clean up the site, as identified by the operator and approved by the EA, is less than $5,000.

NOTE: Authority Cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17384.1. Final Site Cleanup.

All operations, facilities and recycling centers shall meet the following requirements:

(a) The operator shall provide the EA with 30 days written notice of its intent to terminate operations and perform site restoration.

(b) The operator shall provide site restoration necessary to protect public health, safety, and the environment.

(c) The operator shall ensure that the following site restoration procedures are performed upon completion of operations and termination of service:

(1) The site shall be cleaned of all solid waste and recycled materials including, but not limited to, construction and demolition and inert debris and other materials related to the operations.

(2) All machinery shall be cleaned and removed or stored securely.

(3) All remaining structures shall be cleaned of solid waste and recycled materials related to the operation.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17385. Pre–Existing Permits.

(a) If an activity subject to this Article is existing under a Registration Permit or Full Permit on the effective date of this Article, that activity may continue to operate until the operator applies for and obtains the appropriate permit or satisfies the requirements for notification, as applicable, as set forth in this Article. As set forth in section 17385(d), the EA shall notify the owner or operator what permit is required under this Article. The operator shall obtain the required permit or satisfy the requirements for notification in the same manner and within the same time frames as set forth in subsection 17385(b). For the purposes of this section, "existing" includes activities that are operating and activities that have not commenced operation but have received all local government land use approvals required under applicable law and have commenced physical development of the site or improvements on the site for purposes of the activity.

(b) If an activity subject to this Article is existing and does not have a Registration Permit or Full Permit on the effective date of this Article, that activity may continue to operate in substantially the same manner until the EA determines what permit or other documentation is required for the activity under this Article and notifies the owner or operator in writing of its determination. The EA shall make that determination for all facilities and operations within its jurisdiction no sooner than 30 days and no later than 90 days from the effective date of this Article. If the EA determines that a Full Permit is required, the operator shall apply for and obtain that permit within 180 days from the date the owner or operator receives the EA's written determination, whichever first occurs. If the EA determines that a Registration Permit is required, the operator shall apply for and obtain that permit within 60 days from the date the owner or operator receives the EA's written determination, whichever first occurs. If the EA determines that EA notification under CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100, is required, the operator shall comply with the EA notification requirements within 30 days from the date the owner or operator receives the EA's written determination, whichever first occurs. If an activity subject to this Article fails to obtain the required permit or submit documentation for EA notification within the specified time, the EA shall take appropriate enforcement action.

(c) Notwithstanding anything to the contrary in this Article, until that date which is two (2) years from the effective date of this Article (the "Temporary Permit Expiration Date") or any extension of such Temporary Permit Expiration Date, large volume CDI debris processing facilities which are existing on the effective date of this Article may elect to obtain and operate under a temporary Registration Permit pursuant to subsection (b) above, rather than a Full Permit. Operators of facilities so electing shall obtain temporary Registration Permits in the manner as set forth in subsection (b) above. Operators of large volume CDI debris processing facilities that receive temporary Registration Permits under this subsection (c) shall apply for a Full Permit no later than one (1) year from the date the owner or operator of the facility receives notification from the EA that a Full Permit is required under this Article, whichever first occurs, as provided in subsection (b) above, and shall obtain a Full Permit no later than the Temporary Permit Expiration Date. Notwithstanding, the Temporary Permit Expiration Date may be extended by one or more periods not exceeding a total of three (3) years by the EA (the last such extension is the "Extended Temporary Permit Expiration Date") in the event that the EA finds that an operator, for reasons beyond its control, has been unable to obtain a Full Permit despite having exercised good faith and due diligence in attempting to obtain such a permit. Registration Permits obtained under this subsection (c) are temporary and shall expire no later than the Temporary Permit Expiration Date or the Extended Temporary Permit Expiration Date, whichever is applicable. The Full Permit that the operator obtains shall supercede, and cause the expiration

of, the facility's temporary Registration Permit obtained under this subsection (c). If any large volume CDI debris processing facility fails to obtain the required Full Permit within the specified time, the EA shall take appropriate enforcement action.

(d) Waste handling activities which are existing on the effective date of this Article and which handle exclusively construction and demolition wastes, as defined in Section 17225.15 of Article 4 of this Chapter, that do not qualify as C&D debris under this Article shall obtain the appropriate permit as a transfer/processing operation or facility as provided in Articles 6.0 through 6.4, inclusive, of this Chapter. Notwithstanding, such activities shall obtain the necessary permits in the same manner and within the same time frames as if they were operations or facilities subject to this Article, as specified in this Section 17385, such that limited volume transfer operations (defined at section 17403.3) shall comply with EA notification requirements within 30 days from the date the owner or operator receives the written determination from the EA, whichever first occurs, medium volume transfer/processing facilities (defined at section 17403.6) shall obtain a Registration Permit within 60 days from the date the owner or operator receives the written determination from the EA, whichever first occurs, and large volume transfer/processing facilities (defined at 17403.7) shall obtain a Full Permit within 180 days from the date the owner or operator receives the written determination from the EA, whichever first occurs. Large volume transfer/processing facilities which handle exclusively construction and demolition wastes may elect to obtain and operate under a temporary Registration Permit in the same manner, under the same procedures and subject to the same limitations as a large volume CDI debris processing facility under subsection 17385(c). If an activity subject to this subsection fails to obtain the required permit or submit documentation within the specified time, the EA shall take appropriate enforcement action.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 17386. Operation Plans.

(a) Each operator of a small volume CDI debris processing operation, inert debris processing operation Type A, or small volume C&D wood debris chipping and grinding operation that is required to obtain an EA Notification, as set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100 shall file with the EA, together with its EA Notification, an Operation Plan. The Plan shall contain the following:

(1) Names of the operator and owner, and the key employee responsible for operation of the site;

(2) Schematic drawing all buildings and other structures showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas;

(3) Descriptive statement of the manner in which activities are to be conducted at the operation;

(4) Days and hours that the business is to operate. If the hours of debris receipt differ from the hours of material processing, each set of hours shall be stated. For businesses with continuous operations, indicate the start of the operating day for purpose of calculating amount of debris received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(5) Total acreage contained within the operating area;

(6) Operation design capacity including the assumptions, methods, and calculations performed to determine the total capacity;

(7) Information showing the types and the daily quantities of debris to be received

(8) In any calculations necessary as part of the plan, amounts shall be figured in tons. If tonnage is figured from cubic yards, include the conversion factors used as approved by the EA.

(9) Description of the methods used by the operation to comply with each State Minimum Standard required by CCR, Title 14, Division 7, Chapter 3.0, Article 5.9;

(10) Anticipated volume of quench or process water and the planned method of treatment, and disposal of any wastewater;

(11) Description of provisions to handle unusual peak loading;

(12) Description of transfer, recovery and processing equipment, including classification, capacity and the number of units;

(13) Planned method for final disposition of debris received at the operation, including but not limited to materials being transferred to other facilities or operations for further processing, recycled materials, and solid waste;

(14) Planned method for the storage and removal of salvaged material;

(15) Resume of management organization which will operate the operation;

(16) The operator shall record and retain records of any serious injury to the public occurring on–site and any complaint of adverse health effects to the public attributed to operations. Serious injury means any injury that requires inpatient hospitalization for a period in excess of 24 hours or in which a member of the public suffers a loss of any member of the body or suffers any degree of permanent disfigurement; and

(17) The operator shall retain a record of training and instruction completed in accordance with, Article 6.2, section 17410.3.

(18) A copy of the operator's Injury and Illness Prevention Plan (as applicable under current law).

(19) Fire Prevention, Control and Mitigation Plan ("Plan") which contains the following:

(A) Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site;

(B) Identification and description of the equipment the operator will have available (on site and readily available off–site) to control and extinguish fires;

(C) Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment;

(D) Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression;

(E) Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on site, the quantity and dimensions of materials on the site, and the potential for subsurface fires in accumulations of flammable materials on the site.

(F) Evidence that the operator has submitted the Plan to the local fire control authority for review and that the authority has found it to be in compliance with the authority's applicable requirements.

(b) The operator must file amendments as necessary to maintain the accuracy of the Plan. Failure to submit timely amendments may be cause for suspension or revocation of the EA Notification.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

Article 5.95. Construction and Demolition Waste and Inert Debris Disposal Regulatory Requirements

§ 17387. Authority and Scope.

(a) Article 5.95 sets forth permitting requirements, tier requirements, and minimum operating standards for operations and facilities that dispose construction and demolition (C&D) waste and inert debris. This Article is not applicable to operations and facilities that are wholly governed in regulations elsewhere in this Chapter or Title 27.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with Section 40000 of the Public Resources Code (PRC), as amended. These regulations should be read together with the Act.

(c) Nothing in this Article limits or restricts the power of any Federal, State, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict local governments from promulgating laws which are as strict or stricter than the regulations contained in this Article. However, no local government may promulgate laws which are inconsistent with the provisions of this Article.

(d) No provision in this Article shall be construed as relieving any owner or operator from obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports, or other requirements of other regulatory or enforcement agencies, including, but not limited to, local health agencies, Regional Water Quality Control Boards, Department of Toxic Substances Control, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New article 5.95 (sections 17387–17390) and section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17387.5. Purpose.

(a) The purpose of this Article is to promote the health, safety and welfare of the people of the State of California, and to protect the environment by establishing minimum standards for the handling and disposal of C&D waste and inert debris at disposal sites.

(b) By adopting these standards, the board hereby sets forth performance standards for disposal sites which dispose C&D waste and inert debris and which are of State concern, as required by PRC sections 43020 and 43021, and sets forth minimum substantive requirements for operator's submission of information concerning individual disposal sites.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17388. Definitions.

For the purposes of this Article, the following definitions shall apply. Additional definitions that apply to this Article are found at California Code of Regulations (CCR), Title 14, Division 7, Chapter 3, Article 6, sections 17402 and 17402.5, and Article 4, section 17225 and Title 27, Division 2, Chapter 2, Articles 1, and 2.

(a) "C&D" means construction and demolition, as in the term "C&D waste".

(b) "CDI" means any combination of construction and demolition waste and inert debris.

(c) "Construction and Demolition Waste" or "C&D Waste" means the nonhazardous waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

(d) "CDI Waste Disposal Facility" means a facility at which C&D waste, C&D waste together with inert debris (Type A or B) or inert debris (Type B) only is disposed.

(e) "Disposal" means the final deposition of C&D waste or inert debris onto land.

(f) "EA" means enforcement agency as defined in PRC section 40130.

(g) "Engineered Fill Activity" means fill that has been designed by an engineer to act as a structural element of a constructed work and has been placed under engineering inspection, usually with density testing. An engineered fill activity shall meet specifications prepared and certified for a specific project by a Civil Engineer, Certified Engineering Geologist, or similar professional licensed by the State of California, and includes requirements for placement, geometry, material, compaction and quality control.

(h) "Fill" means gravel, rock, soil, sand, uncontaminated concrete, or fully cured asphalt in conjunction with a construction project or grading.

(i) "Fully Cured Asphalt" means that the material must be at ambient temperature, be substantially hardened and be inelastic.

(j) "Grading" means any land excavation, filling, earth moving or combination thereof.

(k) "Inert Debris" means solid waste and recyclable materials that are source separated or separated for reuse and do not contain hazardous waste (as defined in CCR, Title 22, section 66261.3 et. seq.) or soluble pollutants at concentrations in excess of applicable water quality. Inert debris may not contain any putrescible wastes. Gravel, rock, soil, sand and similar materials whether processed or not, that have never been used in connection with any structure, development, grading or other similar human purpose, or that are uncontaminated, are not inert debris. Such materials may be commingled with inert debris.

(1) "Type A inert debris" includes but is not limited to concrete (including fiberglass or steel reinforcing bar embedded in the concrete), fully cured asphalt, crushed glass, fiberglass, asphalt or fiberglass roofing shingles, brick, slag, ceramics, plaster, clay and clay products. Type A inert debris is waste that does not contain soluble pollutants at concentrations in excess of water quality objectives and has not been treated in order to reduce such pollutants. The board, upon consultation with the State Water Resources Control Board, will determine on a case by case basis whether materials not listed in this subdivision qualify as Type A inert debris. The board and the State Water Resources Control Board may consider statewide and site–specific factors in making this determination.

(2) "Type B inert debris" is solid waste that is specifically determined to be inert by the applicable RWQCB, such as treated industrial wastes and de–watered bentonite–based drilling mud, but excluding Type A inert debris.

(*l*) "Inert Debris Engineered Fill Operation" means an activity exceeding one year in duration in which only the following inert debris may be used: fully cured asphalt, uncontaminated concrete (including steel reinforcing rods embedded in the concrete), crushed glass, brick, ceramics, clay and clay products, which may be mixed with rock and soil. Those materials are spread on land in lifts and compacted under controlled conditions to achieve a uniform and dense mass which is capable of supporting structural loading, as necessary, or supporting other uses such as recreation, agriculture and open space in order to provide land that is appropriate for an end use consistent with approved local general and specific plans (e.g., roads, building sites, or other improvements) where an engineered fill is required to facilitate productive use(s) of the land. Filling above the surrounding grade shall only be allowed upon the approval of all governmental agencies having jurisdiction. The engineered fill shall be constructed and compacted in accordance with all applicable laws and ordinances and in accordance with specifications prepared and certified at least annually by a Civil Engineer, Certified Engineering Geologist, or similar professional licensed by the State of California and maintained in the operating record of the operation. The operator shall also certify under penalty of perjury, at least annually, that only approved inert debris has been placed as engineered fill, and specifying the amount of inert debris placed as fill. These determinations may be made by reviewing the records of an operation or by on–site inspection. Certification documents shall be maintained in the operating records of the operation and shall be made available to the EA during normal business hours. Acceptance of other Type A inert debris or shredded tires pursuant to Waste Discharge Requirements prior to the effective date of this Article does not preclude an activity from being deemed an inert debris engineered fill operation, provided that the operation meets all the requirements of this Article once it takes effect. Where such materials have been deposited, the operator must specify in the operation plan the type of waste previously accepted, a diagram of the fill area, and estimations of the depth of the fill material previously accepted. Inert debris placed in an Inert Debris Engineered Fill Operation is not counted as diversion or disposal for a given jurisdiction.

(m) "Inert Debris Type A Disposal Facility" means a site where only Type A inert debris is disposed to land. Inert debris Type A disposal facilities do not include inert debris engineered fill operations.

(n) "Landslide Debris", for the purposes of this Article, means the soil or rock or other natural material deposited on roadways, bridge decks,

flood control facilities, or other structures resulting from a naturally–occurring mass movement of earth or rocks from a mountain, hill, cliff, or road cut.

(o) "Operating Record" means a readily accessible collection of records of an operation's or facility's activities in compliance with required State Minimum Standards under Title 14 and Title 27. The operating record shall include the operation plan for inert debris engineered fill operations, or the disposal facility plan or disposal facility report for facilities, and shall contain, but is not limited to: agency approvals, tonnage and load checking records, hours of operation, owner/operator contacts, and personnel training history. The record may be reviewed by State and local authorities and shall be made available during normal business hours. The records may be maintained at any location that is easily accessible to the EA.

(p) "Putrescible Wastes" means solid wastes that are capable of being decomposed by micro–organisms with sufficient rapidity as to cause nuisances because of odors, vectors, gases or other offensive conditions, and include materials such as, but not limited to food wastes, offal and dead animals. The EA shall determine on a case–by–case basis whether or not a site is handling putrescible wastes.

(q) "RDSI" means Report of Disposal Site Information as described in CCR, Title 27, section 21600.

(r) "RWQCB" means Regional Water Quality Control Board.

(s) "Separated for Reuse" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream for the purpose of additional sorting or processing of those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, and includes materials that have been "source separated".

(t) "Site" means the area where the handling of solid waste, and/or recyclable materials occurs at an operation or facility subject to this Article.

(u) "Solid waste" means the same as in PRC section 40191.

(v) "Source Separated" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(w) "Vector" means any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17388.1. Regulatory Tiers Placement for CDI Waste and Inert Debris Disposal Operations and Facilities.

Construction & Demolition and Inert Debris Tier Placement

Excluded Operations Tier Section 17388.2	*EA Notification*	*Registration*	*Full Solid Waste Facility Permit*	
• Inert Debris Engineered Fill activity which concludes within one year	• Inert Debris Engineered Fill Operations Section 17388.3	• Inert Debris Type A Disposal Facility Section 17388.4	• CDI Waste Disposal Facility Section 17388.5	D I S P O S A L
• Removal and disposal of landslide debris				
• Removal and disposal of sediment accumulated within irrigation or flood control facilities				
• Road building, road repair, etc.				
• Clean closed CDI waste disposal facilities				

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17388.2. Excluded Activities.

(a) The following disposal activities do not constitute C&D waste or inert debris operations or facilities for the purposes of this Article and are not required to meet the requirements set forth herein:

(1) Any use (e.g., grading) of gravel, rock, soil, sand and similar, whether processed or not, that has never been used in connection with any structure, road, parking lot, or similar use.

(2) Engineered fill activities which have local permits as required, and are carried out in conjunction with a construction project (e.g., building and other construction, bridge and roadway work, development of pathways or riding trails, etc), and which use uncontaminated concrete and/or fully cured asphalt which has been reduced in particle size to 2″ or less as part of a recycling activity and concludes within two years from commencement.

(3) Inert debris engineered fill activities which conclude within one year of commencement and that meet all requirements of section 17388.3 of this Article, except subsections (b) inspections, (c) Plan, (d) State Minimum Standards, (g) final cover, (h) scales and submittal of EA Notification.

(4) Removal and disposal of landslide debris containing no C&D waste by Federal, State and local government public works agencies and their contractors, provided that the material removed from such sites is disposed in accordance with applicable law.

(5) Removal and disposal of sediment which has accumulated within irrigation or flood control facilities and which contains no solid waste, by Federal, State and local government public works agencies and their contractors, provided that the material removed from such sites is disposed or otherwise handled in accordance with applicable law.

(6) The use of fully cured asphalt, uncontaminated concrete (including steel reinforcing rods embedded in the concrete), crushed glass, brick, ceramics, clay and clay products, which may be mixed with rock and soil, in connection with road building, road repair, airport runway construction, bridge and roadway work, levee work, flood control work, and all associated activities by Federal, State and local government public works agencies and their contractors.

(7) Existing C&D waste or inert debris disposal sites from which all waste and debris have been removed (clean closure) within one year after February 24, 2004, provided that the material removed from such sites is disposed in accordance with applicable law. The board may extend the time for clean closure by up to one year upon the applicant's showing of good cause for such extension.

(b) Nothing in this section precludes the EA or the board from inspecting an excluded activity to verify that the activity is being conducted in a manner that qualifies as an excluded activity, or from taking any appropriate enforcement action, including the use of a Notice and Order.

The burden of proof shall be on the owner or operator to demonstrate that the activity is excluded pursuant to this section.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17388.3. Inert Debris Engineered Fill Operations.

Inert debris engineered fill operations shall submit EA Notifications, as set forth in CCR, Title 14, Section 18100 et seq. and shall comply with all applicable RWQCB waste discharge requirements.

(a) Each operator of an inert debris engineered fill operation shall submit a copy of its waste discharge requirements or a letter of exemption from the applicable RWQCB to the EA together with its notification of intent to operate.

(b) Inert debris engineered fill operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted quarterly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual.

(c) Each operator of an inert debris engineered fill operation shall file an "Operation Plan" (as specified in this Article, Section 17390) with the EA together with its notification of intent to operate. The information contained in the Plan shall be reviewed by the EA to determine whether it is complete and correct as defined in CCR, Title 14, Section 18101.

(d) All inert debris engineered fill operations shall comply with the State Minimum Standards set forth in Title 27 CCR, Division 2, Chapter 3.0, Subchapter 4, Article 1 (Operating Criteria), and Article 3 (Handling, Equipment and Maintenance), and Article 4 (Controls) (except sections 20515, 20640, 20880, and 20890).

(e) By March 1 of each year, the operator shall report to the EA and the board the total amount of inert debris deposited during the previous year. However, the operator is not subject to the disposal reporting record requirements of Title 14 CCR, Division 7, Chapter 9, Article 9.2 or the disposal fee specified in Public Resources Code Section 48000 and Revenue and Taxation Code Section 45151.

(f) All inert debris engineered fill operations, upon completion or cessation of fill activities for more than one year and upon any transfer of any part of the land subject to the operation prior to completion of fill activities, shall comply with the requirements in Title 27, subsections 21170(a)(1,2 and, if applicable, 3).

(g) Upon the final placement of waste at the site, the operator shall cover the site of fill with three feet of compacted soil above the fill area or with other final cover as determined by the EA. The EA may determine, on the basis of substantial evidence, that a lesser amount of final cover or no final cover is needed, based on potential impacts to the public health, safety and the environment.

(h) If an inert debris engineered fill operation exceeds any combination of the following requirements three (3) or more times within any two (2) year period which the EA determines constitutes a violation of this Article, the facility no longer qualifies for an EA Notification under this section. Upon the third such violation, the EA shall notify the operator in writing that the facility no longer qualifies for an EA Notification, and the operator must within 30 days apply for a Full Permit as if it were a CDI Waste Disposal Facility pursuant to Section 17388.5. In addition, the EA shall issue a cease and desist order pursuant to Section 18304 directing, among other things, that the operator immediately cease accepting material at the site until the operator has demonstrated to the EA that it has corrected the violation and eliminated the cause of the violation. Notwithstanding, the EA may at any time take any additional enforcement action the EA deems appropriate.

The requirements to which this subdivision applies are:

1. Disposal of any wastes not authorized by subsection 17388(*l*);

2. Failure to comply with the requirements for certification by an engineer specified in subsection 17388(l);

3. Failure to comply with requirements for operator certification of materials disposed in the fill as required in subsection 17388(*l*).

(i) Inert debris engineered fill operations are not required to meet the notification requirements of this Article if the operation is occurring at a disposal facility that has a full solid waste facilities permit and the permit authorizes the activity either through a specific condition in the permit or as described and approved in the Report of Disposal Site Information.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).
3. Amendment of first paragraph and subsections (b), (c), (e) and (f) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 17388.4. Inert Debris Type A Disposal Facilities.

Inert debris Type A disposal facilities shall obtain Registration Permits and shall comply with the Registration Permit requirements as set forth in CCR, Title 14, Division 7, Chapter 5.0, Article 3.0 (commencing at Section 18100), with the following requirements set out in CCR, Title 27, Division 2, Chapter 4, Subchapter 3, Article 2 (commencing at Section 21570) in the same manner as if they were municipal solid waste landfills, CCR, Title 14, Division 7, Chapter 9, and with all RWQCB waste discharge requirements.

(a) Each operator of an inert debris Type A disposal facility shall submit a copy of its waste discharge requirements or a letter of exemption from the applicable RWQCB to the EA together with its application for a Registration Permit.

(b) Inert debris Type A disposal facilities shall be inspected monthly by the EA in accordance with Public Resources Code Section 43218.

(c) Each operator shall file with the EA, together with its application for a solid waste facilities permit, a Disposal Facility Plan (as more fully described in CCR, Title 14, Division 7, Chapter 5, Article 3.2, Section 18223.6).

(d) Each operator must comply with the closure and postclosure maintenance requirements of Title 27, CCR, Division 2, Subchapter 5, Article 2 (commencing with Section 21099).

(e) Each operator must comply with the financial assurance requirements for closure and postclosure maintenance, operating liability and corrective action set forth in Title 27 CCR, Division 2, Chapter 6 (commencing at Section 22200).

(f) The EA shall comply with the Enforcement Agency Requirements of Title 27 CCR, Division 2, Chapter 4, Subchapter 3, Article 3, commencing with Section 21650.

(g) Inert debris Type A disposal facilities shall maintain disposal reporting records and comply with the requirements set forth in Title 14 CCR, Division 7, Chapter 9, Article 9.2 (Disposal Reporting System), commencing at Section 18800.

(h) Inert debris Type A disposal facilities shall comply with the State Minimum Standards set forth in Title 27 CCR, Division 2, Chapter 3.0, Subchapter 4, Articles 1 (Operating Criteria), Article 3 (Handling, Equipment and Maintenance), and Article 4 (Controls) (except Sections 20880 and 20890).

(i) Each operator shall determine the weight of all material received at the facility for disposal and shall maintain records of the weight of materials as required herein. Until February 24, 2005, weight of material shall be determined by a conversion factor authorized by the EA for each waste type received. After that date, weight shall be determined by the use of scales, which may be located at the operation or off–site. Notwithstanding, operations in a rural city or a rural county, as defined in Public Resources Code Sections 40183 and 40184, and operations that will cease activities within three years from February 24, 2004, as reflected in their Operation Plan may determine the weight of materials received by use of conversion factors authorized by the EA for each waste type or combination thereof received. Evidence of the accuracy of the conversion factors shall be provided to the EA annually.

(j) If an inert debris Type A disposal facility accepts for disposal any waste not authorized by, or pursuant to, Subsection 17388(k)(1) three (3) or more times within any two (2) year period which the EA determines constitutes a violation of this Article, the facility no longer qualifies for a Registration Permit under this Section. Upon the third such violation, the EA shall notify the operator in writing that the facility no longer qualifies for a Registration Permit, and the operator must within 30 days apply for a Full Solid Waste Facilities Permit as if it were a CDI Waste Disposal Facility pursuant to Section 17388.5. In addition, the EA shall issue a cease and desist order pursuant to Section 18304 directing, among other things, that the operator immediately cease accepting material at the site until the operator has demonstrated to the EA that it has corrected the violation and eliminated the cause of the violation. Notwithstanding, the EA may at any time take any additional enforcement action the EA deems appropriate.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).
3. Amendment filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 17388.5. CDI Waste Disposal Facilities.

CDI waste disposal facilities shall obtain full solid waste facilities permits and shall comply with all requirements promulgated by the board as set forth in CCR, Title 27, Division 2 in the same manner as if they were municipal solid waste landfill units.

(a) CDI waste disposal facilities shall maintain disposal reporting records and shall comply with the requirements set forth in Title 14 CCR, Division 7, Chapter 9, Article 9.2 (Disposal Reporting System), commencing at Section 18800.

(b) Each operator shall determine the weight of all material received at the facility for disposal and shall maintain records of the weight of materials as required herein. Until February 24, 2005, weight of material shall be determined by a conversion factor authorized by the EA for each waste type received. After that date, weight shall be determined by the use of scales, which may be located at the operation or off–site. Notwithstanding, operations in a rural city or a rural county, as defined in Public Resources Code Sections 40183 and 40184, and operations that will cease activities within three years from February 24, 2004, as reflected in their Operation Plan may determine the weight of materials received by use of conversion factors authorized by the EA for each waste type or combination thereof received. Evidence of the accuracy of the conversion factors shall be provided to the EA annually.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).
3. Amendment of subsections (a) and (b) and repealer of subsection (c) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 17388.6. Public Hearing.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).
3. Repealer filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 17389. Record Keeping Requirements for Operations.

All operations shall meet the following requirements:

(a) All records required by this Article shall be maintained in a single accessible location for at least three (3) years and shall be available for inspection by authorized representatives of the board, EA, local health agency, and other duly authorized regulatory and enforcement agencies during normal working hours.

(b) The operator shall maintain a daily log book or file describing special occurrences and methods used to resolve problems arising from these events, including details of all incidents requiring the implementation of emergency procedures. Special occurrences shall include, but are not limited to: receipt or rejection of prohibited wastes, fires, accidents, injury and property damage, flooding, earthquake damage and other unusual occurrences. The operator shall notify the EA by telephone within 24 hours of all incidents requiring the implementation of emergency procedures, unless the EA determines that a less immediate form of notification will be sufficient to protect public health and safety and the environment.

(c) The operator shall document any written and oral complaints received from the public, including the nature of the complaint, the date the complaint was received, the name, address, and telephone number of the person or persons making the complaint (if available), and any actions taken to respond to the complaint.

(d) The operator shall maintain an operating record which shall include, among other things, records of incoming weights or volumes and outgoing salvage or residual weights or volumes shall be kept in a form or manner approved by the EA. Such records shall be adequate for overall planning and control purposes, and be as current and accurate as practicable. These records shall be provided to the EA or the board upon request.

(e) The operator shall record the number of load checks performed and loads rejected.

(f) The operator shall maintain a copy of the written notice to the EA and local health agency specifying the names, addresses, and telephone numbers of the operator or other persons responsible for the operation.

(g) The operator shall maintain records of employee training.

(h) If gas monitoring is conducted at the operation, the operator shall maintain records of all gas monitoring as available and as required.

(i) If water monitoring is conducted at the operation, the operator shall maintain records of all water monitoring as available and appropriate as required.

[Note: Record–keeping requirements for facilities subject to this Article are found at and Title 27, Division 2, Chapter 3, Article 1, section 20510.]

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 17390. Operation Plan.

Each operator of an Inert Debris Engineered Fill Operation, together with its notification of intent to operate filed pursuant to section 17388.3 of this Article, shall file with the EA an Operation Plan. The operator must file amendments as necessary to maintain the accuracy of the Plan. A Plan shall contain the following:

(a) Name(s) of the operator, owner, and the company they represent, if applicable;

(b) Scaled schematic drawing of the buildings and other structures showing layout and general dimensions of the operations area, including but not limited to, unloading, storage, loading, and parking areas;

(c) Descriptive statement of the manner in which activities are to be conducted at the operation;

(d) Days and hours of operation. If the hours of waste receipt differ from the hours of material processing, each schedule may be stated. For facilities with continuous operations, indicate the start of the operating day for the purpose of calculating the amount of waste received per operating day. The operator may also indicate whether or not, and when, other activities such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(e) Total acreage contained within the operating or fill areas;

(f) Design capacity, including the assumptions, methods, and calculations performed to determine the total capacity;

(g) Information indicating the types and daily quantities of waste or debris to be received. If tonnage is determined from records of cubic yardage, include the conversion factor used in the calculation;

(h) Description of methods used by the operation to comply with each State Minimum Standard;

(i) Anticipated volume of quench or process water and the planned method of treatment and disposal of any wastewater;

(j) Description of provisions to handle unusual peak loading;

(k) Description of transfer, recovery and processing equipment, including classification, capacity and the number of units.

(l) Planned method for final placement of the solid waste;

(m) Planned method for the storage and removal of salvaged material.

(n) Resume of management organization that will operate the site.

(o) A description of road building and seasonal tipping pad design.

(p) A description of a program to prevent the acceptance of unapproved materials and hazardous wastes.

(q) A description of the planned method for storage and removal of prohibited wastes.

(r) A general description of the proposed final productive use(s), if any, of the fill area. The description shall specify generally what area(s) within the boundaries of the operation will be capable of supporting a structure upon closure.

(s) The compaction standards for density and design, if any.

(t) A copy of the operator's Injury and Illness Prevention Plan (as applicable under current law).

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

Article 6.0. Transfer/Processing Operations and Facilities Regulatory Requirements

§ 17400. Authority and Scope.

(a) Articles 6.0, 6.1, 6.2, 6.3, and 6.35 set forth permitting requirements and minimum operating standards for operations and facilities that receive, store, handle, recover, transfer, or process solid waste which are subject to the requirements of these Articles. The regulatory tier requirements of sections 17403 through 17403.9 are not applicable to operations and facilities that are subject to regulations elsewhere in this Chapter, including but not limited to, Article 5.6 (commencing at section 17360); and in Chapter 3.1 (commencing with section 17850). Activities placed within the excluded tier in other parts of this Division, may still be subject to these regulatory requirements.

(b) These Articles are adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(c) These Articles implement those provisions of the Act relating to receipt, storage, handling, recovery, transfer, or processing of solid waste. Nothing in these Articles limits or restricts the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict cities and counties from promulgating laws which are as strict or stricter than the regulations contained in these Articles. However, no city or county may promulgate laws which are inconsistent with the provisions of these Articles.

(d) No provision in these Articles shall be construed as relieving any owner, operator, or designee from obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or reports, or other requirements of other regulatory or enforcement agencies, including but not limited to, local heath agencies, regional water quality control boards, Department of Toxic Substances Control, California Department of Industrial Relations, Division of Occupational Safety and Health, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(e) No provision in these Articles is intended to require the owner or operator of an operation to comply with the Enforcement Agency Notification requirements, or the owner or operator of a facility to obtain a tiered permit in accordance with Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2.0, 3.0 and 3.1 of the California Code of Regulations (commencing with section 21570) et seq. and Title 14, Division 7, Chapter 5.0, Article 3.0, (commencing with section 18100); if that owner or operator already has a valid full solid waste facility permit and, that permit authorizes the transfer/processing operation or facility.

(f) Notwithstanding subsection (a) of this section, if a Chipping and Grinding Operation or Facility, as defined in section 17852(k) of this Division, handles material that fails to meet the definition of green material due to contamination as set forth in section 17852(u) of this Division, the operation or facility:

(1) shall be subject to these regulatory requirements,

(2) shall not be considered to be a recycling center as set forth in subsections (c) or (d) of section 17402.5, and

(3) shall not qualify as an excluded operation as set forth in section 17403.1.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. Renumbering of old article 6 heading to new article 6.4, new article 6.0 (sections 17400–17405.0) and section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of article heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).
3. Amendment of subsection (a) filed 8–13–2001 as an emergency; operative 2–11–2002 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 7–11–2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) refiled 6–13–2002 as an emergency; operative 6–13–2002 (Register 2002, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6–13–2002 order, including further amendment of subsection (a) and new subsections (f)–(f)(3), transmitted to OAL 8–22–2002 and filed 9–30–2002 (Register 2002, No. 40).

§ 17401. Applicability of Standards.

HISTORY

1. Repealer filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).

§ 17402. Definitions.

(a) For the purposes of these Articles:

(1) "Contact Water" means water that has come in contact with waste and may include leachate.

(2) "Covered Container" means a container that is covered to prevent the migration of litter from the container, excessive infiltration of precipitation, odor and leachate production, and to prevent access by animals and people; thereby controlling litter, scavenging, and illegal dumping of prohibited wastes. Covers may include, but are not limited to, tarpaulins or similar materials.

(3) "Direct Transfer Facility" means a transfer facility that receives equal to or more than 60 cubic yards or 15 tons (whichever is greater) of solid waste per operating day but less than 150 tons of solid waste and meets all of the following requirements:

(A) is located on the premises of a duly licensed solid waste hauling operator;

(B) only handles solid waste that has been placed within covered containers or vehicles prior to entering the facility and that is transported in vehicles owned or leased by that same operator;

(C) the facility does not handle, separate, or otherwise process the solid waste;

(D) no waste is stored at the facility for more than any 8–hour period;

(E) solid waste is transferred only once and directly from one covered container or vehicle to another covered container or vehicle so that the waste is never put on the ground or outside the confines of a container or vehicle, before, during, or after transfer. Direct transfer would not include top loading trailers where the solid waste actually leaves the con-

fines of the collection vehicle and is suspended in air before falling into a transfer vehicle;

(F) all of the contents of the original transferring container or vehicle must be emptied during a single transfer; and

(G) any waste that may unintentionally fall outside of the containers or vehicles, is promptly cleaned up and replaced within the container or vehicle to which it was being transferred.

(4) "DTSC" means Department of Toxic Substances Control.

(5) "EA" means enforcement agency as defined in PRC section 40130.

(6) "Emergency Transfer/Processing Operation" means an operation that is established because there has been a proclamation of a state of emergency or local emergency, as provided in Title 14, Division 7, Chapter 3, Article 3, sections 17210.1 (j) and (k) and which meets all of the following requirements:

(A) the operation handles only disaster debris and other wastes, in accordance with section 17210.1(d), during the disaster debris recovery phase; and

(B) the location does not currently have a solid waste facility permit;

(C) if the operation accepts, processes, or stores hazardous or household hazardous waste, then these activities must be in compliance with DTSC standards or standards of other appropriate authorities or agencies.

(7) "Hazardous Wastes" means any waste which meets the definitions set forth in Title 22, section 66261.3, et seq. and is required to be managed.

(8) "Large Volume Transfer/Processing Facility" means a facility that receives 100 tons or more of solid waste per operating day for the purpose of storing, handling or processing the waste prior to transferring the waste to another solid waste operation or facility.

(A) In determining the tonnage of solid waste received by the facility, the following materials shall not be included: materials received by a recycling center located within the facility, and by beverage container recycling programs in accordance with Public Resources Code sections 14511.7, 14518, or 14520, if the recycling activities are separated from the solid waste handling activities by a defined physical barrier or where the activities are otherwise separated in a manner approved by the EA.

(B) If the facility does not weigh the solid waste received, then the tonnage shall be determined by using a volumetric conversion factor where one cubic yard is equal to 500 pounds. The EA shall approve an alternate conversion factor if the operator demonstrates that it is more accurate than the required conversion factor.

(9) "Limited Volume Transfer Operation" means an operation that receives less than 60 cubic yards, or 15 tons of solid waste per operating day for the purpose of storing the waste prior to transferring the waste to another solid waste operation or facility and which does not conduct processing activities, but may conduct limited salvaging activities and volume reduction by the operator.

(A) In determining the tonnage of solid waste received by the operation, the following materials shall not be included: materials received by a recycling center located within the operation, and by beverage container recycling programs in accordance with Public Resources Code sections 14511.7, 14518, or 14520, if the recycling activities are separated from the solid waste handling activities by a defined physical barrier or where the activities are otherwise separated in a manner approved by the EA.

(B) If the operation does not weigh the solid waste received, then the tonnage shall be determined by using a volumetric conversion factor where one cubic yard is equal to 500 pounds. The EA shall approve an alternate conversion factor if the operator demonstrates that it is more accurate than the required conversion factor.

(10) "Litter" means all solid waste which has been improperly discarded or which has migrated by wind or equipment away from the operations area. Litter includes, but is not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state.

(11) "Medium Volume Transfer/Processing Facility" means a facility that receives equal to or more than 60 cubic yards or 15 tons (whichever is greater) of solid waste per operating day but less than 100 tons of solid waste, for the purpose of storing or handling the waste prior to transferring the waste to another solid waste operation or facility; or a facility that receives any amount of solid waste, up to 100 tons per operating day, for the purpose of processing solid waste prior to transferring the waste to another solid waste operation or facility.

(A) In determining the tonnage of solid waste received by the facility, the following materials shall not be included: materials received by a recycling center located within the facility, and by beverage container recycling programs in accordance with Public Resources Code sections 14511.7, 14518, or 14520, if the recycling activities are separated from the solid waste handling activities by a defined physical barrier or where the activities are otherwise separated in a manner approved by the EA.

(B) If the facility does not weigh the solid waste received, then the tonnage shall be determined by using a volumetric conversion factor where one cubic yard is equal to 500 pounds. The EA shall approve an alternate conversion factor if the operator demonstrates that it is more accurate than the required conversion factor.

(12) "Nuisance" includes anything which:

(A) is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and

(B) affects at the same time an entire community, neighborhood or any considerable number of persons. The extent of annoyance or damage inflicted upon an individual may be unequal.

(13) "On–site" means located within the boundary of the operation or facility.

(14) "Open burning" means the combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion,

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(C) control of the emission of the combustion products.

(15) "Operating day" means the hours of operation as set forth in the application, Enforcement Agency Notification and/or permit not exceeding 24 hours.

(16) "Operating Record" means an easily accessible collection of records of an operation's or facility's activities and compliance with required state minimum standards under Title 14. The Record may include the Facility Plan or Transfer/Processing Report for facilities, and shall contain but is not limited to containing: agency approvals, tonnage and loadchecking records, facility contacts and training history. The record may be reviewed by state and local authorities and shall be available during normal business hours. If records are too voluminous to place in the main operating record or if the integrity of the records could be compromised by on–site storage, such as exposure to weather, they may be maintained at an alternative site, as long as that site is easily accessible to the EA.

(17) "Operations Area" means:

(A) the following areas within the boundary of an operation or facility as described in the permit application or Enforcement Agency Notification:

(i) equipment management area, including cleaning, maintenance, and storage areas; and

(ii) material and/or solid waste management area, including unloading, handling, transfer, processing, and storage areas.

(B) the boundary of the operations area is the same as the permitted boundary but may or may not be the same as the property boundary.

(18) "Operator" means the owner, or other person who through a lease, franchise agreement or other arrangement with the owner, that is listed in the permit application or Enforcement Agency Notification, is legally responsible for all of the following:

(A) complying with regulatory requirements set forth in these Articles;

(B) complying with all applicable federal, state and local requirements;

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(C) the design, construction, and physical operation of the operations area;

(D) controlling the activities at an operation or facility as listed on the permit application or Enforcement Agency Notification.

(19) "Owner" means the person or persons who own, in whole or in part, an operation or facility, and/or the land on which it is located.

(20) "Processing" means the controlled separation, recovery, volume reduction, conversion, or recycling of solid waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines or volume reduction equipment. Recycling Center is more specifically defined in section 17402.5 (d) of this Article.

(21) "Putrescible Wastes" include wastes that are capable of being decomposed by micro–organisms with sufficient rapidity as to cause nuisances because of odors, vectors, gases or other offensive conditions, and include materials such as, but not limited to food wastes, offal and dead animals. The EA shall determine on a case–by–case basis whether or not a site is handling putrescible wastes.

(22) "Regulated Hazardous Waste" means a hazardous waste, as defined in section 66260.10 of Division 4.5 of Title 22.

(23) "RWQCB" means the Regional Water Quality Control Board.

(24) "Salvaging" means the controlled separation of solid waste material which do not require further processing, for reuse or recycling prior to transfer activities.

(25) "Scavenging" means the uncontrolled and/or unauthorized removal of solid waste materials.

(26) "Sealed Container Transfer Operation" means a transfer operation that meets the following requirements:

(A) handles only solid waste that has previously been placed within containers that have either a latched, hard top or other impermeable cover which is closed tightly enough to:

(1) prevent liquid from infiltrating into or leaking out of the container; and

(2) prevent the propagation and migration of vectors; and,

(i) the solid waste remains within the unopened containers at all times while on–site; and,

(ii) the containers are not stored on–site for more than 96 hours. Sealed container transfer operations do not include operations excluded by Public Resources Code section 40200(b)(3).

(27) "Special Waste" includes but is not limited to:

(A) waste requiring special collection, treatment, handling, storage, or transfer techniques as defined in Title 22, section 66260.10.

(B) waste tires and appliances requiring CFC removal.

(28) "Spotter" means an employee who conducts activities that include, but are not limited to, traffic control, hazardous waste recognition and removal for proper handling, storage and transport or disposal, and protection of the public from health and/or safety hazards.

(29) "Store" means to stockpile or accumulate for later use.

(30) "Transfer/Processing Facility" or "Facility" includes:

(A) those activities governed by the Registration Permit tier or Full Solid Waste Facility Permit requirements (as specified in sections 17403.6 and 17403.7); and,

(B) which:

1. receive, handle, separate, convert or otherwise process materials in solid waste; and/or

2. transfer solid waste directly from one container to another or from one vehicle to another for transport; and/or

3. store solid waste;

(C) The receipt of separated for reuse material pursuant to Public Resources Code, Division 12.1, Chapter 2, sections 14511.7, 14518, or 14520, located within a solid waste facility does not constitute solid waste handling, or processing, if there is a defined physical barrier to separate recycling activities defined in Public Resources Code, Division 12.1, Chapter 2, sections 14511.7, 14518, or 14520, from the solid waste activities, or where the recycling and solid waste activities are considered by the EA as separate operations.

(D) "Transfer/Processing Facilities" do not include activities specifically defined in section 17402.5(c) of this Article, and operations and facilities that are subject to regulations in Chapter 3.1 (commencing with section 17850).

(31) "Transfer/Processing Operation" or "Operation" includes:

(A) those activities governed by the EA Notification tier requirements; and,

(B) which:

1. receive, handle, separate, convert or otherwise process materials in solid waste; and/or

2. transfer solid waste directly from one container to another or from one vehicle to another for transport; and/or

3. store solid waste;

(C) The receipt of separated for reuse material pursuant to Public Resources Code, Division 12.1, Chapter 2, sections 14511.7, 14518, or 14520, located within a solid waste operation does not constitute solid waste handling, or processing, if there is a defined physical barrier to separate recycling activities defined in Public Resources Code, Division 12.1, Chapter 2, sections 14511.7, 14518, or 14520, from the solid waste activities, or where the recycling and solid waste activities are considered by the EA as separate operations.

(D) "Transfer/Processing Operations" do not include activities specifically defined in section 17402.5(c) of this Article, and operations and facilities that are subject to regulations in Chapter 3.1 (commencing with section 17850).

(32) "Volume Reduction" means techniques such as: compaction, shredding, and baling.

(33) "Waste Hauling Yard Operation" is an operation that meets the following requirements:

(A) is located on the premises of a duly licensed solid waste hauling operator, who receives, stores, or transfers waste as an activity incidental to the conduct of a refuse collection and disposal business, and;

(B) handles only solid waste that has been placed within a covered container before the container arrives at the waste hauling yard, and;

(C) no more than 90 cubic yards of waste is stored on–site in covered containers at any time, and;

(D) the solid waste remains within the original covered containers while on–site at any times, and;

(E) the covered containers are not stored on–site for more than any 72 hour period;

(F) if the EA has information that the operation does not meet these requirements, the burden of proof shall be on the owner or operator to demonstrate that the requirements are being met.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).
3. Amendment of subsections (a)(30)(D) and (a)(31)(D) filed 8–13–2001 as an emergency; operative 2–11–2002 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 7–11–2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)(30)(D) and (a)(31)(D) refiled 6–13–2002 as an emergency; operative 6–13–2002 (Register 2002, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6–13–2002 order, including amendment of subsection (a)(21), transmitted to OAL 8–22–2002 and filed 9–30–2002 (Register 2002, No. 40).

§ 17402.5. Definitions and Related Provisions Regarding Activities That Are Not Subject to the Transfer/Processing Regulatory Requirements.

(a) This section sets forth definitions and related provisions regarding activities that are not subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter.

(1) Activities that are not in compliance with the applicable definitions and related provisions of this section shall be subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter.

(2) The definitions and related provisions of this section are for use only to determine the applicability of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter.

(b) The following general definitions may apply to one or more of the activities that are more specifically defined in subdivisions (c) and (d) of this section.

(1) "Residual" means the solid waste destined for disposal, further transfer/processing as defined in section 17402(a)(30) or (31) of this Article, or transformation which remains after processing has taken place and is calculated in percent as the weight of residual divided by the total incoming weight of materials.

(2) "Reuse" means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded.

(3) "Separated for Reuse" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, and includes materials that have been "source separated".

(4) "Source Separated" means materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

(c) Activities included in one of the following definitions are not subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter, provided that these activities do not include the acceptance of solid waste which has not been separated for reuse. If an activity defined in this section is accepting solid waste which has not been separated for reuse, it must meet the requirements of subdivision (d) of this section or else it shall be subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter.

(1) "Auto Dismantler" means a person or business entity engaged in the business of buying, selling, or dealing in vehicles including nonrepairable vehicles, for the purpose of dismantling the vehicles, buying or selling the integral parts and component materials thereof, in whole or in part, or dealing in used motor vehicle parts pursuant to California Vehicle Code, section 220.

(2) "Auto Shredder" or "Metal Shredder" means a person or business entity that accepts scrap metal, typically automobiles and white goods, and mechanically rends that scrap metal into fist sized bits and pieces and separates the ferrous metals, nonferrous metals and other materials for the purpose of recycling.

(3) "Buy Back Center" means a person or business entity engaging in those activities defined in Public Resources Code Sections 14518, or 14520.

(4) "Drop–off Center" means a person or business entity engaging in those activities defined in Public Resources Code Section 14511.7.

(5) "Manufacturer" means a person or business entity that uses new or separated for reuse materials as a raw material in making a finished product that is distinct from those raw materials.

(6) "Regional Produce Distribution Center" means a distribution center that receives unsold produce (sometimes referred to as "pre–consumer") back from stores to which it originally sent the produce, for the purpose of transferring this produce to a compost operation or facility, or to a beneficial use. A regional produce distribution center would not include a site where produce is processed.

(7) "Rendering Plant" means a person or business entity where dead animals or any part or portion thereof, vegetable oils, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other byproduct whatsoever.

(8) "Reuse Salvage Operation" means a person or business entity which sterilizes, dismantles, rebuilds, or renovates, nonputrescible separated–for–reuse materials, and that recovers for recycling or reuse distinct material types that have not been commingled with other materials before they enter the waste stream. Examples of this activity include, but are not limited to, wire choppers, and dismantlers of furniture and mattresses, and "brown goods" such as computer equipment, VCRs, and televisions.

(9) "Scrap Metal Recyclers and Dealers" means a person or business entity including all employees of the person or business entity, (except automotive recyclers and auto shredders as defined in this section), whose primary business is the purchasing; processing by shredding, shearing, baling, and torching; trading, bartering or otherwise receiving secondhand or castoff metal material which includes ferrous metals, nonferrous metals, aluminum scrap, auto bodies, major appliances and other metals, including containers that are regulated pursuant to Public Resources Code Sections 14511.7, 14518 or 14520.

(10) "Wire Chopper" means a person or business entity which uses source separated metal components or wire for the purpose of recycling or reuse.

(11) "Wood, Paper or Wood Product Manufacturer" means a person or business entity that uses separated for reuse paper or woody materials in order to produce a finished product able to be used as is, or to manufacture another product such as, boxes or boards, without further processing.

(d) A "Recycling Center" means a person or business entity that meets the requirements of this subdivision. A recycling center shall not be subject to the requirements of Articles 6.0, 6.1, 6.2, 6.3 and 6.35 of this Chapter.

(1) A recycling center shall only receive material that has been separated for reuse prior to receipt.

(2) The residual amount of solid waste in the separated for reuse material shall be less than 10% of the amount of separated for reuse material received by weight.

(A) The residual amount is calculated by measuring the outgoing tonnage after separated for reuse materials have been removed.

(B) The residual amount is calculated on a monthly basis based on the number of operating days.

(3) The amount of putrescible wastes in the separated for reuse material shall be less than 1% of the amount of separated for reuse material received by weight, and the putrescible wastes in the separated for reuse material shall not cause a nuisance, as determined by the EA.

(A) The amount of putrescible wastes is calculated in percent as the weight of putrescible wastes divided by the total incoming weight of separated for reuse material.

(B) The amount of putrescible wastes is calculated on a monthly basis based on the number of operating days.

(4) The only separation that may occur at the recycling center is the sorting of materials that have been separated for reuse prior to receipt.

(5) The recycling center may include an adjustment in the calculation to include the weight of water in the residual, when the use of water is essential to the sorting or processing of the material, provided that such an adjustment is also made in the weight of materials received for processing.

(6) The following materials shall not be included in calculating residual as set forth in subdivision (d)(2) of this section, if the recycling activities are separated from the material handling activities noted below by a defined physical barrier or where the activities are otherwise separated in a manner that the EA determines will keep the materials from being commingled:

(A) materials received at an on–site Buy Back Center;
(B) materials received at an on–site Drop–off Center;
(C) cannery waste;
(D) construction and demolition materials;
(E) nonhazardous contaminated soil;
(F) grease–trap pumpings;
(G) nonhazardous asbestos;
(H) nonhazardous ash;
(I) compost and compost feedstock;
(J) sewage sludge;
(K) tires.

(7) If the EA has information that material that is being received is not separated for reuse or source separated, that the residual is 10% or more

of the total per month, or that the amount of putrescible wastes is 1% or more of the total per month, the burden of proof shall be on the owner or operator to demonstrate otherwise.

(A) A business that accepts loads of material that are not separated for reuse or source separated does not qualify as a recycling center.

(B) If the EA has reason to believe that a business is accepting material that is not separated for reuse or source separated due to the averaging or combining of those loads with other loads of separated for reuse material, the burden of proof will be on the business to demonstrate that it is not accepting loads of mixed solid waste.

(C) If the EA has reason to believe that a business is accepting material that is not separated for reuse or source separated due to the separation of portions of the material at consecutive sites, each of which removes less than 10% residual, the burden of proof will be on the business to demonstrate that it is not accepting loads of mixed solid waste.

(D) If the EA determines that a business has exhibited a pattern and practice of failing to comply with the provisions of this subsection, the EA may issue a Notice and Order requiring the business to obtain a Registration Permit or Full Permit or comply with the Enforcement Agency Notification requirements as made applicable in sections 17403 through 17403.7 of this Article.

(E) At the time that the EA requires a recycling center to provide evidence that it is in compliance with this subdivision, the EA shall provide the recycling center with a written description of the information that has caused the EA to believe that the recycling center is not in compliance. Nothing in this requirement is intended to require the EA to identify the name or other identifying information regarding any individual(s) who have complained about the recycling center.

(F) Nothing in this section precludes the enforcement agency or the board from the following: inspecting a business to verify that it is conducted in a manner that meets the provisions of this subsection; or, from taking any appropriate enforcement action, including the use of a Notice and Order as provided in Section 18304.

(8) Operations which do not meet the 10% residual percentage in subdivision (d)(2) of this section but which qualify as a Limited Volume Transfer Operation, shall comply with the requirements of section 17403.3 within one month of March 5, 1999.

(9) recycling center operators may voluntarily report their residual percentage to the EA and the CIWMB using form CIWMB 607 (located in Appendix A).

(10) If the EA determines that a person or business entity purporting to operate a recycling center is not in compliance with this subsection and issues an enforcement order, that person or business entity may appeal that order in accordance with Public Resources Code section 44307.

(e) If a Chipping and Grinding Operation or Facility, as defined in section 17852(a)(10) of this Division, handles material that fails to meet the definition of green material due to contamination as set forth in section 17852(a)(21) of this Division, the operation or facility shall not be considered to be a recycling center as set forth in subsections (c) or (d) of section 17402.5.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).
2. Amendment filed 8–13–2001 as an emergency; operative 2–11–2002 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 7–11–2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 6–13–2002 as an emergency; operative 6–13–2002 (Register 2002, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6–13–2002 order, including further amendment of section, transmitted to OAL 8–22–2002 and filed 9–30–2002 (Register 2002, No. 40).
5. Change without regulatory effect amending subsection (e) filed 6–29–2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 17403.0. Regulatory Tiers Requirements for Transfer/Processing Operations and Facilities.

Sections 17403.1 through 17403.7 set forth the regulatory tier requirements (Title 14, Division 7, Chapter 5.0, Article 3.0, commencing with section 18100 or Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2, 3 and 3.1 of the California Code of Regulations (commencing with section 21570) that apply to specified types of transfer/processing operations and facilities. These requirements are summarized in Table 1.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE, and new Table 1 filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Table 1
Transfer/Processing Operations and Facilities
Placement into the Regulatory Tiers

Not Subject to Articles 6.0, 6.1, 6.2, 6.3 and 6.35	*Excluded Tier*	*Enforcement Agency Notification Tier*	*Registration Permit Tier*	*Full Solid Waste Facility Permit*
•Auto Dismantler Section 17402.5(c)(1)	•Locations where <15 cubic yards of combined container volume is provided to serve as multi–residence receptacles for residential refuse at the place of generation. Section 17403.1(a)(1)	•Emergency Transfer/Processing Operations Section 17403.5	•Medium Volume Transfer/Processing Facility Section 17403.6	•Large Volume Transfer/Processing Facility Section 17403.7
•Auto Shredder Operations Section 17402.5(c)(2)		•Sealed Container Transfer Operations Section 17403.2	•Direct Transfer Facility Section 17403.4	
•Buy Back Centers Section 17402.5(c)(3)		•Limited Volume Transfer Operations Section 17403.3		
•Drop–off Centers Section 17402.5(c)(4)	•Locations where <15 cubic yards of combined container volume is handled for recycling. Section 17403.1(a)(2)			
•Manufacturers Section 17402.5(c)(5)				
•Recycling Centers Section 17402.5(d)	•Storage receptacle at the place of generation for waste from multi–residential buildings or for commercial solid wastes Section 17403.1(a)(3)			
•Rendering Plants Section 17402.5(c)(6)				
•Reuse Salvage Operations (includes furniture and mattress dismantlers and demanufacturers) Section 17402.5(c)(7)	•Containers used to store construction or demolition wastes at the place of generation. Section 17403(a)(4)			
•Scrap Metal Recyclers and Dealers Section 17402.5(c)(8)	•Containers used to store salvaged materials. Section 17403.1(a)(5)			
•Wire Choppers Section 17402.5(c)(9)				
•Wood, Paper, or Wood Product Manufacturer Section 17402.5(c)(10)	•Waste Hauling Yard Operations. Section 17403.1(a)(6)			
	•Storage of Other Wastes. Section 17403(1)(a)(7)			

Note: There are no operations or facilities placed within the Standardized tier.

§ 17403.1. Excluded Operations.

(a) The following operations do not constitute transfer operations or facilities for the purposes of these Articles and are not required to meet the requirements set forth herein:

(1) Locations where 15 cubic yards or less of combined container volume is provided to serve as multi–residence receptacles for residential refuse and are located at the place of generation; or

(2) Locations where 15 cubic yards or less of combined container volume of separated for reuse material is handled for recycling; or

(3) Storage receptacles at the place of generation for waste from multi–residential buildings or for commercial solid wastes at the place of generation; or

(4) Containers used to store construction or demolition wastes at the place of generation; or

(5) Containers used to store salvaged materials; or

(6) Waste Hauling Yard Operations; or

(7) Storage and handling of any of the following wastes:

(A) Municipal solid waste removed from seagoing vessels that is quarantined in accordance with 7 Code of Federal Regulations section 330.400 and 9 Code of Federal Regulations section 94.5;

(B) Controlled substances confiscated by law enforcement agencies, including, but not limited to seized narcotics and other contraband;

(C) Agricultural wastes with possible pest contamination;

(D) Dead animals with possible infectious diseases;

(E) U.S. Currency which must be destroyed; or

(F) Confidential records destruction, including microfiche, and microfilm;

(G) As determined by the EA, other discrete waste streams that are already subject to stricter handling requirements under Federal or State law.

(b) Nothing in this section precludes the EA from inspecting an excluded operation to verify that the operation is being conducted in a manner that qualifies it as an excluded operation or from taking any appropriate enforcement action. The burden of proof shall be on the owner or operator to demonstrate that the operations are excluded pursuant to this section.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.2. Sealed Containers Transfer Operations.

All sealed container transfer operations subject to this Article shall comply with the Enforcement Agency Notification requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of California Code of Regulations (commencing with section 18100). These operations shall be inspected by the EA, as necessary to verify compliance with minimum standards. Inspections shall be conducted quarterly, unless the EA deter-

mines a lesser frequency is necessary, but in no case shall the frequency be less than annual. The operator shall specify the operation's boundary area in the operating record.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.3. Limited Volume Transfer Operations.

All limited volume transfer operations subject to this Article shall comply with the Enforcement Agency Notification requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18100). These operations shall be inspected by EA as necessary to verify compliance with minimum standards. Inspections shall be conducted quarterly, unless the EA determines a lesser frequency is necessary, but in no case shall the frequency be less than annual. The operator shall specify the operation's boundary area in the operating record.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.4. Direct Transfer Facility.

All direct transfer facilities subject to this Article shall comply with the Registration Permit requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18104). These facilities shall be inspected monthly by the EA in accordance with PRC section 43218.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.5. Emergency Transfer/Processing Operations.

(a) All emergency transfer/processing operations shall comply with the Enforcement Agency Notification requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18100). These operations shall be inspected by the EA as necessary to verify compliance with minimum standards, but in no case shall the frequency be less than monthly. The operator shall specify the operation's boundary area in the operating record.

(b) In addition, the emergency transfer/processing operations shall meet the following requirements:

(1) the land owner has certified his/her knowledge of the proposed activity and agrees to ensure proper termination, and;

(2) The operation shall not exist for a period of time greater than 120 days from the date that the Enforcement Agency Notification is received by the EA. Upon receipt of the reports required by section 17210.5, the operation may continue for an additional period as specified by the EA to assist in the recovery and clean–up as necessary from a state or local emergency.

(c) The emergency transfer/processing operation shall cease operation should the EA determine that any of the following occurs:

(1) the emergency transfer/processing operation is not being used exclusively to handle the state or local emergency;

(2) the emergency transfer/processing operation is no longer necessary in accordance with section 17210.2 of this Division;

(3) the use of the emergency transfer/processing operation will cause or contribute to a public health and safety or environmental problem;

(4) the operator is not utilizing disaster debris diversion programs to the extent feasible.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.6. Medium Volume Transfer/Processing Facilities.

All medium volume transfer/processing facilities subject to this Article shall comply with the Registration Permit requirements set forth in Title 14, Division 7, Chapter 5.0, Article 3.0 of the California Code of Regulations (commencing with section 18104). These facilities shall be inspected monthly by the EA in accordance with PRC section 43218.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.7. Large Volume Transfer/Processing Facilities.

All large volume transfer/processing facilities subject to Articles 6.0 through 6.35 shall obtain a Full Solid Waste Facilities Permit, in accordance with the procedures set forth in Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2, 3, and 3.1 of the California Code of Regulations (commencing with section 21570). The Transfer/Processing Report required by section 18221.6 shall constitute the Report of Facility Information required by section 21570(f)(2) of Title 27. These facilities shall be inspected monthly by the EA in accordance with PRC section 43218.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.8. Facility Plan.

Each operator of a Medium Volume Transfer/Processing Facility, as defined in section 17402(a)(11), or a Direct Transfer Facility, as defined in section 17402(a)(3), shall file with the EA a "Facility Plan" or "Plan" (as specified in section 18221.5). The information contained in the Plan shall be reviewed by the EA to determine whether it is complete and correct as defined in Title 14, Division 7, Chapter 5.0, Article 3.0, section 18101.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17403.9. Transfer/Processing Report.

(a) Each operator of a Large Volume Transfer/Processing facility, as defined in section 17402(a)(8), shall file with the EA a "Transfer/Processing Report" or "Report" (as specified in section 18221.6). The Transfer/Processing Report will be used in place of the Report of Station Information (RSI) after March 5, 1999. Any operator of an existing facility who submits an application package to the EA, pursuant to Title 27, section 21570, which proposes to change the facility's operations, or to change the solid waste facility permit shall do one of the following:

(1) submit the updated information as an amendment to the existing RSI or in the form of the Transfer/Processing Report; or

(2) submit a complete Transfer/Processing Report as described in section 18221.6.

(b) After March 5, 1999, any operator of a new facility that submits an application package to the EA pursuant to Title 27, section 21570, shall submit a complete Transfer/Processing Report pursuant to section 18221.6.

(c) These requirements do not apply to those facilities which have filed an RSI and an application for a solid waste facility permit prior to March 5, 1999. In the event the EA determines the application package for the RSI first submitted prior to March 5, 1999, to be incomplete, additional information requested shall be submitted as part of the RSI and/or application for a solid waste facility permit, as appropriate.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17405.0. Applicability of State Minimum Standards.

(a) Articles 6.0, 6.1, 6.2, and 6.3 of this Chapter set forth the minimum standards that apply to all transfer/processing operations and facilities, direct transfer facilities, sealed container operations, limited volume transfer operations, and emergency transfer/operations, except as noted in Section 17400(a).

(b) Article 6.35 of this Chapter sets forth additional minimum standards that will apply only to transfer/processing facilities.

(c) Approvals, determinations and other requirements that the EA is authorized to make in Articles 6.0, 6.2, 6.3, and 6.35 shall be provided in writing by the EA to the operator. The operator shall place a copy of these approvals in addition to those records identified in sections 17414 and 17414.1 in the operating record.

(d) Some of the standards contained in Articles 6.0, 6.1, 6.2, 6.3, and 6.35 of this Chapter allow the EA to approve an alternative method of compliance with the standard. These provisions are not intended to allow the EA to change the particular standard, but are intended to allow the EA flexibility to approve, in advance, an alternative method of meeting the existing standard. For facilities that require a full solid waste facility permit, the EA may choose to include the approved method as a term and condition of the solid waste facility permit, rather than in the manner authorized by subdivision (c) of this section. If the method is included in the solid waste facility permit, a change to the method may require a revision to the solid waste facility permit in accordance with the procedures set forth in Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2, 3, and 3.1 (commencing with section 21570).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Article 6.1. Siting and Design

§ 17406.1. Siting on Landfills.

(a) Operations and facilities or portions thereof, located atop fully or partially closed solid waste landfills shall meet postclosure land use requirements pursuant to Title 27, California Code of Regulations, section 21190.

(b) Operations and facilities or portions thereof, located on intermediate cover on a solid waste landfill shall locate operations areas on foundation substrate that is stabilized, either by natural or mechanical compaction, to minimize differential settlement, ponding, soil liquefaction, or failure of pads or structural foundations.

(c) Operations and facilities or portions thereof, located on intermediate cover on a solid waste landfill shall be operated in a manner not to interfere with the operations of the landfill or with the closure or postclosure maintenance of the landfill.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 6.1 (sections 17406.1–17406.2) and section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17406.2. General Design Requirements.

(a) The design of a new operation or facility shall utilize expert advice, as appropriate, from persons competent in engineering, architecture, landscape design, traffic engineering, air quality control, and design of structures.

(b) The design shall be based on appropriate data regarding the expected service area, anticipated nature and quantity of wastes to be received, climatological factors, physical settings, adjacent land use (existing and planned), types and number of vehicles anticipated to enter the operation or facility, adequate off–street parking facilities for transfer vehicles, drainage control, the hours of operation and other pertinent information. If the operation or facility is to be used by the general public, the design shall take account of safety features that may be needed to accommodate such public use.

(c) The operation or facility shall be designed in such a manner as to restrict the unloading area to as small an area as practicable, provide adequate control of windblown material, minimize the propagation or attraction of flies, rodents or other vectors and the creation of nuisances by reason of solid wastes being handled at the operation. Other factors which shall be taken into consideration are: dust control, noise control, public safety, and other pertinent matters related to the protection of public health at the operation or facility.

(d) In reviewing the design of a proposed operation or facility, the EA may require the applicant to describe how he or she has complied with applicable local and state requirements regarding odor control measures, personnel health and safety, and sanitary facilities.

(e) Solid waste storage containers shall be durable, easily cleanable, designed for safe handling, and constructed to prevent loss of wastes from the container during storage. If such a container is used to store garbage, other wet or liquid producing wastes, or wastes composed of fine particles, such container shall in all cases be nonabsorbent and leak–resistant. Unloading areas shall be easily cleanable, designed for safe handling and constructed to prevent loss of wastes.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Article 6.2. Operating Standards

§ 17407.1. Burning Wastes and Open Burning.

(a) If burning wastes are received at an operation or facility, they shall be separated from other wastes and deposited in a safe area, spread, and extinguished. A safe area is defined as being away from unloading, transfer, or processing areas, structures on adjacent properties and other fire hazard areas.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency clean–up operations, or any other wastes as approved by local regulatory agencies, approved by the EA, local air district, and local fire department, is prohibited at all operations and facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 6.2 (sections 17407.1–17410.4) and section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17407.2. Cleaning.

(a) Operations, facilities, and their equipment, boxes, bins, pits and other types of containers shall be cleaned using the following schedule, or at a lesser frequency, approved by the EA, in order to prevent the propagation or attraction of flies, rodents, or other vectors:

(1) all operations and facilities shall be cleaned each operating day of all loose materials and litter;

(2) all operations or facilities that operate 24 hours per day must clean the operations or facilities at least once every 24 hours.

(b) The entrance and exit shall be cleaned at a frequency which prevents the tracking or off–site migration of waste materials.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17407.3. Drainage Control.

(a) Drainage at all operations and facilities shall be controlled to:

(1) minimize the creation of contact water;

(2) prevent to the greatest extent possible given existing weather conditions, the uncontrolled off–site migration of contact water;

(3) protect the integrity of roads and structures;

(4) protect the public health; and

(5) prevent safety hazards and interference with operations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17407.4. Dust Control.

(a) The operator shall take adequate measures to minimize the creation, emission, or accumulation of excessive dust and particulates, and prevent other safety hazards to the public caused by obscured visibility. The operator shall minimize the unnecessary handling of wastes during processing to prevent the creation of excessive dust. Measures to control dust include, but are not limited to: reduced processing, periodic sweeping and cleaning, misting systems or ventilation control. One or more of the following may be an indication that dust is excessive:

(1) safety hazards due to obscured visibility; or

(2) irritation of the eyes; or

(3) hampered breathing;

(4) migration of dust off–site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17407.5. Hazardous, Liquid, and Special Wastes.

(a) An operation or facility shall not intentionally accept or store hazardous wastes, including batteries, oil, paint, and special wastes, unless it has been approved to handle the particular waste by the appropriate regulatory agencies. Such approvals shall be placed in the operating record.

(b) At operations and facilities where unauthorized hazardous wastes are discovered, control measures as are necessary to protect public health, safety and the environment, such as elimination or control of dusts, fumes, mists, vapors or gases shall be taken prior to isolation or removal from the operation or facility,

(c) Liquid wastes and sludges shall not be accepted or stored at an operation or facility unless the operator has written approval to accept such wastes from the appropriate agencies and the EA. The EA shall authorize acceptance of these wastes only if the operation, facility, and the transfer vehicles are properly equipped to handle such wastes in a manner to protect public health, safety, and the environment.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17407.6. Liquid Wastes.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.1. Litter Control.

Litter at operations and facilities shall be controlled, and routinely collected to prevent safety hazards, nuisances or similar problems and off–site migration to the greatest extent possible given existing weather conditions.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.2. Medical Wastes.

Medical waste, unless treated and deemed to be solid waste, which is regulated pursuant to the Medical Waste Management Act (commencing with Section 117600 of the Health and Safety Code), shall not be accepted at an operation or facility, unless approved by the appropriate regulatory agency.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.3. Noise Control.

Noise shall be controlled to prevent health hazards and to prevent nuisance to nearby residents. Measures to control noise include but are not limited to: posting of warning signs that recommend or require hearing protection; separation by barriers that limit access to authorized personnel only; or, enclosures to reduce noise transmission. Compliance with specific provisions regarding noise control in a local land use approval, such as a conditional use permit or CEQA mitigation measures, shall be considered compliance with this standard.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.4. Non–Salvageable Items.

Drugs, cosmetics, foods, beverages, hazardous wastes, poisons, medical wastes, syringes, needles, pesticides and other materials capable of causing public health or safety problems shall not be salvaged at operations or facilities unless approved by the local health agency and the EA.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.5. Nuisance Control.

Each operation and facility shall be conducted and maintained to prevent the creation of a nuisance. Compliance with specific provisions regarding nuisance control in a local land use approval, such as a conditional use permit or CEQA mitigation measures, shall be considered compliance with this standard.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.6. Maintenance Program.

All aspects of the operation or facility shall be maintained in a state of good repair. The operator shall implement a preventative maintenance program to monitor and promptly repair or correct deteriorated or defective conditions.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.7. Personnel Health and Safety.

The Injury, Illness, and Prevention Program (IIPP) shall be available for review by local and state inspectors during normal business hours. Nothing in this section is intended to make the EA responsible for enforcing the IIPP.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Repealer and new section and amendment of NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17408.8. Protection of Users.

An operation or facility shall be designed, constructed, operated, and maintained so that contact between the public and solid wastes is minimized. This may be accomplished through the use of railings, curbs, grates, fences, and/or spotters.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.1. Roads.

All on–site roads and driveways shall be designed and maintained to minimize the generation of dust and tracking of soil onto adjacent public roads. Such roads shall be kept in safe condition and maintained to allow vehicles utilizing the operation or facility to have reasonable all–weather access to the site.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.2. Sanitary Facilities.

The operator shall maintain all sanitary and hand–washing facilities which may be required, by applicable state or local requirements, in a reasonably clean and adequately supplied condition.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Repealer and new section and amendment of NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.3. Scavenging and Salvaging.

Each operation or facility shall meet the following requirements:

(a) scavenging shall be prohibited;

(b) salvaging of materials, such as metal, paper, glass and cardboard is permitted as an integral part of the operation, subject to conditions established by the EA, the local land use authority, or other approving agencies.

(c) salvaging activities shall be conducted in a planned and controlled manner and not interfere with other aspects of site operation. Activities shall be conducted so as not to interfere with expeditious entry and exit of vehicles delivering waste to the transfer or processing operation or facility. Salvaging activities conducted at a transfer/processing operation or facility shall be confined to specified, clearly identified areas of the operation or facility, and controlled to prevent health, safety or nuisance problems;

(d) storage of materials salvaged from solid wastes shall be ancillary to the activities of the operation or facility unless such storage is planned as an integral part of the operation. Materials salvaged on–site shall be stored away from other activity areas in specified, clearly identifiable areas as noted in the Facility Plan or Transfer/Processing Report. They shall be arranged to minimize risk of fire, health and safety hazard, vector harborage, or other hazard or nuisance, and limited to a specified volume and/or duration as described in the Enforcement Agency Notification, Facility Plan, or Transfer/Processing Report.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.4. Signs.

(a) For operations or facilities not open to the public, each point of access from a public road shall be posted with an easily visible sign indicating the operation or facility name and location of nearest public operation or facility.

(b) If the operation or facility is open to the public, there shall be an easily visible sign at all public entrances indicating the name of the operator, the operator's telephone number, schedule of charges, hours of operation, and a listing of the general types of materials which either (1) WILL be accepted, or (2) WILL NOT be accepted.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.5. Loadchecking.

(a) The operator of an attended operation or facility shall implement a loadchecking program to prevent the acceptance of waste which is prohibited by this Article. This program must include at a minimum:

(1) the number of random loadchecks to be performed;

(2) a location for the storage of prohibited wastes removed during the loadchecking process that is separately secured or isolated;

(3) records of loadchecks and the training of personnel in the recognition, proper handling, and disposition of prohibited waste. A copy of the loadchecking program and copies of the loadchecking records for the last year shall be maintained in the operating record and be available for review by the appropriate regulatory agencies.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17409.6. Parking.

Adequate off–street parking area(s) shall be provided, if necessary, for transfer vehicles. Compliance with specific provisions regarding ade-

quacy of off-street parking in a local land use approval, such as a conditional use permit or CEQA mitigation measures, shall be considered compliance with this standard.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17410.1. Solid Waste Removal.

(a) All solid wastes shall be removed at the following frequencies or at an alternate frequency approved by the EA, in order to prevent the propagation or attraction of flies, rodents or other vectors:

(1) operations shall remove solid wastes accepted at the site within 7 days from the date of receipt;

(2) facilities shall remove solid waste accepted at the site within 48 hours from the time of receipt.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17410.2. Supervision and Personnel.

The operator shall provide adequate supervision and a sufficient number of qualified personnel to ensure proper operation of the site in compliance with all applicable laws, regulations, permit conditions and other requirements. The operator shall notify the EA in writing of the name, address and telephone number of the operator or other person responsible for the operation. A copy of the written notification shall be placed in the operating record.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17410.3. Training.

Personnel assigned to the operation or facility shall be adequately trained in subjects pertinent to site solid waste operations and maintenance, hazardous materials recognition and screening, use of mechanized equipment, environmental controls, emergency procedures and the requirements of this Article. A record of such training history shall be maintained and made available for inspection.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17410.4. Vector, Bird and Animal Control.

The operator shall take adequate steps to control or prevent the propagation, harborage and attraction of flies, rodents, or other vectors, and animals, and to minimize bird attraction.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

STATION APPROVAL

§ 17411. Written Approval Required.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17412. Compliance with Conditions.

HISTORY

1. Repealer filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).

§ 17413. Conformance with Plan.

HISTORY

1. Repealer filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).

[The next page is 744.3.]

Article 6.3. Record Keeping Requirements

§ 17414. Record Keeping Requirements.

Each operator shall meet the following requirements:

(a) each operator shall maintain records of incoming weights or volumes and outgoing salvage or residual weights or volumes in a form and manner approved by the EA. Such records shall be: submitted to the EA or CIWMB upon request; be adequate for overall planning and control purposes; and, be as current and accurate as practicable;

(b) all records required by this Article shall be kept by the operator in one location and accessible for three (3) years and shall be available for inspection by the EA and other duly authorized regulatory agencies during normal working hours.

(c) the operator shall submit copies of specified records to the EA upon request or at a frequency approved by the EA;

(d) the operator shall maintain a daily log book or file of special occurrences encountered during operations and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Special occurrences shall include but are not limited to: fires, injury and property damage, accidents, explosions, receipt or rejection of prohibited wastes, lack of sufficient number of personnel pursuant to section 17410.2, flooding, earthquake damage and other unusual occurrences. In addition, the operator shall notify the EA by telephone within 24 hours of all incidents requiring the implementation of emergency procedures, unless the EA determines that a less immediate form of notification will be sufficient to protect public health and safety and the environment;

(e) the operator shall record any written public complaints received by the operator, including:

(1) the nature of the complaint,

(2) the date the complaint was received,

(3) if available, the name, address, and telephone number of the person or persons making the complaint, and

(4) any actions taken to respond to the complaint;

(f) the operator shall maintain a copy of the written notification to the EA and local health agency of the name, address and telephone number of the operator or other person(s) responsible for the operations as required by section 17410.2;

(g) The operator shall maintain records of employee training as required by section 17410.3;

(h) all transfer/processing operations and facilities shall maintain records as required by section 18809 et seq.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 6.3 (section 17414) and section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Amendment of section heading, section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17414.1. Documentation of Enforcement Agency Approvals, Determinations, and Requirements.

Approvals, determinations, and other requirements the EA is authorized to make under this Subchapter shall be provided in writing to the operator and placed in the operating record by the operator.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Article 6.35. Additional Operating Requirements for Facilities Only.

§ 17415.1. Communications Equipment.

Each facility shall have adequate communication equipment available to site personnel to allow quick response to emergencies.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 6.35 (sections 17415.1–17419.2) and section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17415.2. Fire Fighting Equipment.

Each Facility shall have fire suppression equipment continuously available, properly maintained and located as required by the local fire authority.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17416.1. Housekeeping.

The operator shall provide adequate housekeeping for the maintenance of facility equipment and shall minimize accumulations of fuel drums, inoperable equipment, parts, tires, scrap, and similar items.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17416.2. Lighting.

The facility and/or equipment shall be equipped with adequate lighting, either through natural or artificial means, to ensure the ability to monitor incoming loads, effectiveness of operations, and public health, safety and the environment.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17416.3. Equipment.

Equipment shall be adequate in type, capacity and number, and sufficiently maintained to allow the facility to meet all requirements of Articles 6.3 and 6.35 of these standards.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17418.1. Site Security.

The facility shall be designed to discourage unauthorized access by persons and vehicles through the use of either a perimeter barrier or topographic constraints.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17418.2. Site Attendant.

A facility open to the public shall have an attendant present during public operating hours or the facility shall be inspected by the operator on a regularly scheduled basis as approved by the EA to ensure that it meets all of the requirements of Articles 6.2, 6.3 and 6.35.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17418.3. Traffic Control.

(a) Traffic flow through the facility shall be controlled to prevent the following:

(1) interference with or creation of a safety hazard on adjacent public streets or roads,

(2) on–site safety hazards, and

(3) interference with operations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17419.1. Visual Screening.

The facility shall have appropriate treatment of areas open to public view to create and maintain an aesthetically acceptable appearance as approved by the local land use authority, or if none exist, in consultation with the EA. Compliance with specific provisions regarding visual screening in a local land use approval, such as a conditional use permit, or CEQA mitigation measures shall be considered compliance with this standard.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17419.2. Water Supply.

A safe and adequate water supply for drinking and emergency use (i.e.: first aid) shall be available.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Article 6.4. Transfer/Processing Station Standards

§ 17420. Applicability of Standards.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Renumbering of old article 6 heading to new article 6.4 (section 17420) and new section filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
2. Repealer of article 6.4 and section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17421. Exclusions.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17422. Design.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17423. Plan of Operation.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17424. Records.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17425. Small Volume Transfer Station Operation.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17426. Cleaning and Waste Removal Frequency.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17441. Report of Station Information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43040 and 43021, Public Resources Code.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17442. Station Modifications.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17451. Design Responsibility.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17452. General Design Parameters.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17453. Public Health Design Parameters.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17461. Weight Volume Records.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17462. Special Occurrences.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17463. Inspection of Records.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17471. Availability.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17472. Training.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17473. Supervision.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17474. Attendant.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17481. Identification Signs.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17482. Entry Signs.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17483. Station Security.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17484. Roads.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17485. Visual Screening.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17486. Station Construction.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17491. Sanitary Facilities.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17492. Water Supply.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17493. Communications Facilities.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17494. Lighting.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17495. Fire Fighting Equipment.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17496. Protection of Users.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17497. Personnel Health and Safety.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17511. Confined Unloading.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17512. Cleaning.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17513. Solid Waste Removal.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17514. Parking.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17515. Scavenging.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17516. Salvaging Permitted at Transfer Stations.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17517. Volume Reduction.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17518. Processing Area.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17519. Processing Operations.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17520. Storage of Salvage.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17521. Removal.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17522. Non–Salvageable Items.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17531. Nuisance Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17532. Dust Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17533. Vector and Bird Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17534. Drainage Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17535. Litter Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17536. Noise Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17537. Odor Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17538. Traffic Control.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17546. General.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17547. Standby Equipment.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17548. Transfer Vehicles.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17549. Inspection of Equipment.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17550. Housekeeping.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17556. General.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17557. Station Maintenance Program.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17561. Burning Wastes.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17562. Hazardous Wastes.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17563. Infectious Wastes.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 17564. Liquid Wastes.

HISTORY

1. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

Article 7.1. Disposal Site Standards—General

§ 17601. Applicability of Standards.

NOTE: Authority cited: Section 40502, 43020, 43021 and 43030, Public Resources Code. Reference: Sections 40000–40002, 40508, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.1.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Amendment of section and NOTE filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
6. Repealer of article 7.1 (sections 17601–17617) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to general disposal site standards have been relocated to title 27, division 2.

§ 17602. Site Owner and Site Operator.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17603. Change of Ownership.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 44005, Public Resources Code.

HISTORY

1. Change without regulatory effect filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17606. Recording.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 44100, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering and amending former section 17735 to section 17606 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17607. Periodic Site Review.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17751 to section 17607 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

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§ 17608. Conformance with Plan.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17616. Report of Disposal Site Information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17617. Site Modifications.

HISTORY

1. Repealer filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

Article 7.2. Disposal Site Siting and Design

§ 17626. Design Responsibility.

HISTORY

1. Repealer of article 7.2 (sections 17626–17629) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site siting and design have been relocated to title 27, division 2.

§ 17627. Ultimate Use of Site.

HISTORY

1. Change without regulatory effect renumbering Section 17627 to Section 17796 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.

§ 17628. General Design Parameters.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17629. Public Health Design Parameters.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 7.3. Disposal Site Records

§ 17636. Weight/Volume Records.

HISTORY

1. Repealer of article 7.3 (sections 17636–17649) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site records have been relocated to title 27, division 2.

§ 17637. Subsurface Records.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17638. Special Occurrences.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17639. Inspection of Records.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17646. Availability.

HISTORY

1. Change without regulatory effect renumbering Section 17646 to Section 17671 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.

§ 17647. Training.

HISTORY

1. Change without regulatory effect renumbering Section 17647 to Section 17672 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.

§ 17648. Supervision.

HISTORY

1. Change without regulatory effect renumbering Section 17648 to Section 17673 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.

§ 17649. Site Attendant.

HISTORY

1. Change without regulatory effect renumbering Section 17649 to Section 17674 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.

Article 7.4. Disposal Site Improvements

§ 17656. Identification Signs.

HISTORY

1. Repealer of article 7.4 (sections 17656–17660) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site improvements have been relocated to title 27, division 2.

§ 17657. Entry Signs.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17658. Site Security.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17659. Access Roads.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17660. Internal Roads.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 7.5. Disposal Site Operations

§ 17666. Sanitary Facilities.

HISTORY

1. Repealer of article 7.5 (sections 17666–17696) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site operations have been relocated to title 27, division 2.

§ 17667. Water Supply.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17668. Communications Facilities.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17669. Lighting.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17670. Personnel Health and Safety.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17671. Availability.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17646 to section 17671 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17672. Training.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17647 to section 17672 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17673. Supervision.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17648 to section 17673 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17674. Site Attendant.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 7649 to section 17674 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17676. Confined Unloading.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17677. Spreading and Compacting.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17678. Slopes and Cuts.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17679. Final Site Face.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Change without regulatory effect renumbering Section 17679 to Section 17777 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17680. Stockpiling.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17681. Availability of Cover Material.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17682. Cover.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17683. Performance Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49). For history of former section, see Register 78, No. 30.
2. Change without regulatory effect amending subsection (e) filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
3. Editorial correction of subsection (e)(2) printing error in formula (Register 90, No. 41).
4. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17684. Intermediate Cover.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17685. Final Cover.

HISTORY

1. Change without regulatory effect renumbering Section 17685 to Section 17773 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 80, No. 49.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17686. Scavenging.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17687. Salvaging Permitted.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17688. Volume Reduction and Energy Recovery.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17689. Processing Area.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17690. Storage of Salvage.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17691. Removal.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17692. Non–Salvageable Items.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17693. General.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17726 to section 17693 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17694. Standby Equipment.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17727 to section 17694 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17695. General.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17731 to section 17695 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17696. Operating Site Maintenance.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect renumbering former section 17732 to section 17696 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 7.6. Disposal Site Controls

§ 17701. Nuisance Control.

HISTORY

1. Repealer of article 7.6 (sections 17701–17751) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site controls have been relocated to title 27, division 2.

§ 17702. Animal Feeding.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17703. Fire Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17704. Leachate Control.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17705. Gas Control.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17706. Dust Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17707. Vector and Bird Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17708. Drainage and Erosion Control.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17709. Contact with Water.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17710. Grading of Fill Surfaces.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17711. Litter Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17712. Noise Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17713. Odor Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17714. Traffic Control.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17715. Ponded Liquid.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17726. General.

HISTORY

1. Change without regulatory effect renumbering Section 17726 to Section 17693 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17727. Standby Equipment.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Change without regulatory effect renumbering Section 17727 to Section 17694 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17731. General.

HISTORY

1. Change without regulatory effect renumbering Section 17731 to Section 17695 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17732. Operating Site Maintenance.

HISTORY

1. Change without regulatory effect renumbering Section 17732 to Section 17696 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17733. Inspection upon Completion.

HISTORY

1. Change without regulatory effect renumbering Section 17733 to Section 17768 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17734. Completed Site Maintenance.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Change without regulatory effect renumbering Section 17734 to Section 17788 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17735. Recording.

1. Change without regulatory effect renumbering Section 17735 to Section 17606 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17741. Burning Wastes.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17742. Hazardous Wastes.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17743. Liquid Wastes.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).

2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17744. Dead Animals.

HISTORY

1. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17751. Periodic Site Review.

HISTORY

1. Amendment filed 7–25–78; effective thirtieth day thereafter (Register 78, No. 30).
2. Change without regulatory effect renumbering Section 17751 to Section 17607 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 7.8. Disposal Site Standards Closure and Postclosure

§ 17760. Scope and Applicability.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code, and Section 66796.22(d), Government Code.

HISTORY

1. Certificate of Compliance as to 3–22–90 order renumbering and amending section 17760 to section 17761 and adding new section 17760 transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34). For prior history, see Register 90, No. 17.
2. Repealer of article 7.8 (sections 17760–17796) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to disposal site standards closure and postclosure have been relocated to title 27, division 2.

§ 17761. Definitions.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a)(1), (a)(7), (a)(22), (a)(25), (a)(26), (a)(29), (a)(31), (a)(42), (a)(43), and (a)(44) and new subsection (a)(3) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17763. Time Frames for Closure.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Sections 66796.22(d) and 66796.22(g), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsection (a) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17764. Partial Closure.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Sections 66796.22(d) and 66796.22(g), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17765. Closure of Treatment Units.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Sections 66796.22(d) and 66796.22(g) Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operative of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including new subsection (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17766. Emergency Response Plan.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(d), Government Code; and Section 44100, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17767. Security at Closed Sites.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(d), Government Code; and Section 44100, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a) and (b) transmitted to OAL and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17768. Inspection Upon Completion.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 17733 to section 17768 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Amendment filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. Amendment refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. Amendment refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17771. Structure Removal.

NOTE: Authority cited: Sections 40504 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17772. Decommissioning of Environmental Control Systems.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17773. Final Cover.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 17685 to section 17773 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. New subsections (a) and (c)–(e), and amendment of subsection (b) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. New subsections (a) and (c)–(e), and amendment of subsection (b) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. New subsections (a) and (c)–(e), and amendment of subsection (b) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

§ 17774. Construction Quality Assurance.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (e) and (i) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17776. Final Grading.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect adding section 17776 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
2. New subsections (a)–(f) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. New subsections (a) – (f) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. New subsections (a)–(f) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (f) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17777. Final Site Face.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 43021 and 44100, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 17679 to section 17777 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
2. Amendment of subsections (a) and (b) and new subsection (c) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. Amendment of subsections (a) and (b) and new subsection (c) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. Amendment of subsections (a) and (b), and new subsection (c) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsections (c)(1) and (c)(7)(A) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

6. Editorial correction of printing error in HISTORY 3. and 4. (Register 91, No. 30).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17778. Final Drainage.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code, and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect adding section 17778 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
2. New subsections (a)–(j) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. New subsections (a)–(j) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (f)(2), (g)(5), and (j) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17779. Slope Protection and Erosion Control.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance, ,must be transmitted to OAL, within 120 days or emergency language will be repealed by, operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsection (c) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17781. Leachate Control During Closure and Postclosure.

NOTE: Authority cited: Sections 45020 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22.(d), Government Code; and Sections 43020, 43021 and 44100, Public Resources Code.

HISTORY

1. Change without regulatory, effect adding section 17781 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
2. New subsections (a)–(e) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency, language will be repealed by operation of law on 12–18–89.
3. New subsection (a)–(e) refiled 12–8–89 as an emergency; operative 12–18–89 (register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. New subsections (a)–(e) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsections (b), (c), and (e) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17782. Ground Water Monitoring During Closure and Postclosure.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 43021 and 44100, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No.35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsection (d) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783. Gas Monitoring and Control During Closure and Postclosure.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect adding section 17783 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
2. New subsections (a)–(d) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. New subsections (a)–(d) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law, on 4–17–90.
4. New subsections (a)–(d) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.3. Monitoring.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order including deletion of subsection (a)(3) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.5. Perimeter Monitoring Network.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order including deletion of subsection (a)(3) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.7. Structure Monitoring.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency,; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120days or emergency language will be repealed by operation of law 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.9. Monitored Parameters.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law oil 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.11. Monitoring Frequency.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No.35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.13. Reporting

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.15. Control.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–18–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance ,must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No.17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No.34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17783.17. Exemptions.

NOTE: Authority cited: Sections 40502 and 45020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New section filed 8–18–89 its as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. Certificate of Compliance transmitted to OAL 2–9–90 and withdrawn 3–12–90. New section refiled 4–26–90 as an emergency; operative 4–26–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 8–24–90) or emergency language will be repealed by operation of law on 8–25–90.
4. Certificate of Compliance as to 4–26–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17787. Recording.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 44100, Public Resources; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect adding section 17787 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35)
2. Amendment of subsection (a) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. Amendment of subsection (a) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No.51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. Amendment of subsection (a) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17788. Postclosure Maintenance.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796(d), Government Code. Reference: Section 43021, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 17734 to section 17788 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. New subsections (a) and (b) filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
3. New subsections (a) and (b) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be trans-

mitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

4. New subsections (a) and (b) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17789. Review of Postclosure Maintenance Activities.

NOTE: Authority cited: Sections 66796.22(d), Government Code. Reference: Sections 43021 and 44100, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. New sections filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17792. Change of Ownership During Closure or Postclosure Maintenance.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 43021 and 44005, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect adding section 17792 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
2. Amendment filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repeated by operation of law on 12–18–89.
3. Amendment refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. Amendment refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a) and (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17793. Notification During Postclosure Maintenance.

NOTE: Authority cited: Sections 66790(f) and 66796.22(d), Government Code. Reference: Section 66771, Government Code.

HISTORY

1. New section filed 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
2. Repealed by operation of Government Code section 11346.1 (g) (Register 90, No. 34).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 17796. Postclosure Land Use.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 43021 and 44105, Public Resources Code; and Section 66796.22(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 17627 to section 17796 filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 78, No. 30.
2. Amendment of subsection (b) and new subsections (c)–(f) filed 8–18–89 as all emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency. language will be repealed by operation of law on 12–18–89.
3. Amendment of subsection (b) and new subsections (c)–(f) refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
4. Amendment of subsection (b) and new subsections (c)–(f) refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a), (b), (c), (d) and (f) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer of section and Appendix I filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 8. Agricultural Solid Waste Management Standards

GENERAL

§ 17801. Intent of Standards.

These standards are generally intended to describe levels of performance expected rather than stating detailed requirements; wherever possible, persons responsible for management of manures and agricultural wastes shall be permitted flexibility of approach in meeting the objectives set by the standards. Where the phrase "as approved by the Enforcement Agency" is used, it is contemplated that, in most instances, the operator will propose a method, physical improvement, management modification or other appropriate means to comply with a standard to enable approval by the Enforcement Agency (as opposed to the Enforcement Agency specifying the exact means of compliance). These standards are intended only to eliminate excessive vectors or other adverse public health/well–being effects associated with any agricultural operation.

It is the intent of these standards to promote conditions under which agricultural operations and residential or public use of properties can coexist.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; Section 4520, Health and Safety Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 8 (sections 17801–17824, not consecutive) filed 7–2–75; effective thirtieth day thereafter (Register 75, No. 27).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 17802. Applicability of Standards.

HISTORY

1. Change without regulatory effect repealing section filed 11–15–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 46).

§ 17803. Compliance with Laws and Regulations.

Nothing in these standards shall be construed as relieving an owner, operator, or designer from the obligation of obtaining all required permits, licenses, or other clearances, and complying with all orders, laws, regulations or other requirements of other approval, regulatory or enforcement agencies, such as, but not limited to, local health entities, water and air quality boards, local land use authorities, fire authorities, etc.

§ 17804. Conformance with Plan.

HISTORY

1. Change without regulatory effect repealing section filed 11–15–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 46).

§ 17805. Appeals.

The Board and the Department will provide for review and appeals regarding these standards. Thus any enforcement action by the local Enforcement Agency, including the determination that agricultural operations are resulting in excessive vectors, odor, dust, or feathers, may be investigated and confirmed or denied by the Department.

HISTORY

1. Amendment filed 11–15–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 46).

DEFINITIONS (H) THESE DEFINITIONS SUPPLEMENT THE DEFINITIONS IN ARTICLE 4

§ 17810.1. Manure.

(H) Manure shall mean the accumulated moist animal excrement that does not undergo decomposition or drying as would occur on open grazing land or natural habitat. This definition shall include feces and urine which may be mixed with bedding material, spilled feed or soil.

§ 17810.2. Confined Animals.

(H) Confined animals shall include, but not be limited to, all cattle, horses, sheep, swine, rabbits, poultry, dogs, cats, fur–bearing animals, and other animals that are held, confined or fed supplementally in enclosures where the excrement accumulates as manure. The numbers of animals per unit of enclosed area shall be a part of this definition when excessive vectors, odor, dust or feathers are produced as determined by the Enforcement Agency or the Department taking into consideration varying regional environmental conditions.

§ 17810.3. Enforcement Agency Inspection.

(H) An Enforcement Agency inspection shall mean a site inspection by an agent of the Enforcement Agency or the Department trained in the knowledge of the biology of and prevention of vectors, odor, dust or feathers associated with agricultural solid wastes, so as to protect the public health and well–being.

§ 17810.4. Excessive Vectors.

(H) Excessive vectors shall refer to the presence of domestic flies, mosquitoes, cockroaches, rodents, and/or any other vectors associated with agricultural wastes which:

(a) Occur as immature stages and adults in numbers considerably in excess of those found in the surrounding environment; and

(b) are associated with design, layout and management of agricultural operations; and

(c) disseminate widely from the property; and

(d) cause detrimental effects on the public health or well–being of the majority of the surrounding population as determined by the Enforcement Agency or the Department.

§ 17810.5. Excessive Odor, Dust and Feathers.

(H) Excessive odor, dust and feathers shall refer to the presence of these materials which:

(a) Are associated with design, layout and management of agricultural operations; and

(b) disseminate widely from the property; and

(c) cause detrimental effects on the public health or well–being of the majority of the surrounding population as determined by the Enforcement Agency or the Department.

STORAGE HANDLING AND DISPOSAL

§ 17820. Agricultural Solid Wastes As a Public Health/Well–Being Hazard.

(H) Any person who sustains, stores, manages or receives agricultural by–products or other waste materials generated as a result of the operation of any agricultural property or produce processing plant shall do so in such a manner as to prevent the spread of disease, the occurrence of excessive vectors, odor, dust, or feathers or other such adverse conditions related to the public health and well–being. In addition:

(a) The presence of excessive vectors on the property shall be prima facie evidence that an adverse public health/well–being hazard exists.

(b) The determination of the presence of excessive vectors shall be made by an Enforcement Agency or the Department.

(c) The determination of the presence of excessive vectors shall take into account the proximity of the agricultural operation to neighboring human habitation and use areas, the population density of the entire area and the severity of the public health/well–being hazard posed by said vectors.

§ 17821. Inspection of Agricultural Operations

(H) The Enforcement Agency shall have inspection capability to enforce these standards and to conduct appropriate numbers of site inspections of agricultural operations located within its jurisdiction. Need, if any, and frequency and timing of inspection should be based on public demand, the nature and size of the operation, the season, the vector potential of the operation and its proximity to residential properties. During inspection of agricultural operations the inspector shall observe all reasonable precautionary security, sanitation or other measures specified by the agricultural operator.

§ 17822. Correction of Adverse Public Health/Well–Being Conditions.

(H) When the Enforcement Agency or the Department determines that design and layout of agricultural operations or management of agricultural wastes result in the occurrence of excessive vectors or any other adverse public health/well–being related conditions, the owner or operator of the property shall be informed in writing of a violation of these standards and shall be required to institute appropriate measures promptly to correct the condition in a manner approved by the Enforcement Agency or the Department.

§ 17823. Agricultural Wastes Management Practices.

(H) Agricultural operations shall be managed in a manner which will not cause excessive vectors or other adverse public health/well–being conditions.

The Enforcement Agency shall provide state–developed guidelines which will assist agricultural operators or others concerned in design, layout, and management plans that minimize excessive vectors or other adverse public health/well–being conditions.

Organic wastes are potential resources, and agricultural operations should adopt comprehensive waste handling practices which will lead to resource recovery.

§ 17823.1. Animal Manure.

(H) The manure management practices being performed by the agricultural operation shall be conducted so as to prevent the creation of excessive vectors or other adverse public health/well–being conditions, otherwise manure shall be removed at intervals frequent enough to prevent the occurrence of such conditions. Manure removed from confined animal areas shall be managed so as to prevent the creation of adverse public health/well–being conditions.

§ 17823.2. Vegetable or Fruit Crop Field Residues.

(H) Vegetable or fruit crop field residues which can be a source of excessive vectors or other conditions that adversely affect the public health/well–being shall be incorporated into the soil when conditions of soil moisture permit, completely consumed by livestock, removed from the field prior to the development of such conditions or managed by other appropriate measures to suppress the adverse effect.

After removal from the field, crop residue wastes shall be stored, processed or disposed of so as to prevent the creation of conditions adverse to the public health/well–being.

§ 17823.3. Vegetable or Fruit Crop Processing Wastes.

(H) Where decomposable wastes from vegetable or fruit crop processing operations can become a source of excessive vectors or other conditions that adversely affect the public health/well–being, approved management practices to prevent such conditions shall be initiated.

§ 17823.4. Dust, Hair and Feathers.

(H) Dust, hair and feathers associated with confined agricultural operations shall be managed so as to avoid conditions that adversely affect the public health/well–being as determined by the Enforcement Agency. Accumulations of hair and feathers shall be periodically disposed of in a manner approved by the Enforcement Agency or the Department.

§ 17823.5. Dead Animals.

(H) The carcasses of animals with any contagious disease shall be disposed of by means prescribed by the California Department of Food and Agriculture, Division of Animal Industry.

Animal carcasses from confined animal operations shall be collected, stored, and removed from the property to an approved processing facility or disposal site prior to the creation of adverse public health/well–being

conditions, or processed or disposed of on the property in a manner approved by the Enforcement Agency.

Animal carcasses from animals on pasture or rangeland shall be managed so as to prevent the creation of excessive vectors or other adverse public health/well-being conditions.

§ 17824. Management of Agriculture Waste Ponds, Lagoons, Ditches and Pipelines.

(H) Ponds, lagoons, ditches and pipelines used for the transfer, holding, treatment and stabilization of manure or vegetable or fruit crop wastes shall be managed so as to prevent the creation or harborage of excessive vectors or other conditions that adversely affect the public health/well-being. Accumulations of floating solids, scum and thick aquatic vegetation, and the growth of weeds and emergent aquatic vegetation at the water's edge shall be continuously maintained at a minimal level to assist in the prevention of such adverse conditions.

Disposal or utilization of the contents of such facilities shall not create excessive vectors or other adverse public health/well-being conditions.

Article 9. Litter Receptacle Standards

§ 17830. Purpose.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 24389, Health and Safety Code. Reference: Chapter 1, Title 7.8, Government Code, Sections 43020 and 43021, Public Resources Code and Chapter 3.5, Division 29, Health and Safety Code.

HISTORY

1. New article 9 (sections 17830–17840) filed 8–18–78; effective thirtieth day thereafter (Register 78, No. 33).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer of article 9 and section filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17831. Limitations.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17832. Responsibility.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17833. Placement of Receptacles.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17834. Receptacle Design.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17835. Receptacle Maintenance.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17836. Special Design and Maintenance Limitations.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17837. Receptacle Marking.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17838. Prohibited Acts.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17839. Penalties.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

§ 17840. Compliance.

HISTORY

1. Repealer filed 9–10–96; operative 10–10–96 (Register 96, No. 37).

Chapter 3.1. Compostable Materials Handling Operations and Facilities Regulatory Requirements

Article 1. General

§ 17850. Authority and Scope.

(a) This Chapter is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with section 40000 of the Public Resources Code, as amended. These regulations should be read together with the Act.

(b) This Chapter implements those provisions of the Act relating to composting. Nothing in this Chapter is intended to limit the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer.

(c) Biological decomposition of organic material can be both a naturally occurring or artificially controlled process. This Chapter establishes standards and regulatory requirements for intentional and inadvertent composting resulting from the handling of compostable materials, including but not limited to feedstock, compost, or chipped and ground materials as defined in section 17852.

(d) Nothing in these standards shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or reports, or other requirements of other regulatory or EA, including but not limited to, local health entities, regional water quality control boards, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

(e) Nothing in these standards precludes the EA or the board from inspecting an activity, operation or facility to determine if it is subject to these standards.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Amendment of chapter 3.1 and article 1 headings and new section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of subsection (c) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (c) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order, including further amendment of subsection (c), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment of chapter heading, amendment of subsections (c) and (d) and new subsection (e) filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsection (a) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17851. Scope.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New chapter 3.1, article 1 and section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17852. Definitions.

(a) For the purposes of this Chapter:

(1) "Active Compost" means compost feedstock that is in the process of being rapidly decomposed and is unstable. Active compost is generat-

ing temperatures of at least 50 degrees Celsius (122 degrees Fahrenheit) during decomposition; or is releasing carbon dioxide at a rate of at least 15 milligrams per gram of compost per day, or the equivalent of oxygen uptake.

(2) "Additives" means material mixed with feedstock or active compost in order to adjust the moisture level, carbon to nitrogen ratio, or porosity to create a favorable condition. Additives include, but are not limited to, fertilizers and urea. Additives do not include septage, biosolids, or compost feedstock.

(3) "Aerated Static Pile" means a composting process that uses an air distribution system to either blow or draw air through the pile. Little or no pile agitation or turning is performed.

(4) "Aerobic Decomposition" means the biological decomposition of organic substances in the presence of oxygen.

(5) "Agricultural Material" means material of plant or animal origin, which result from the production and processing of farm, ranch, agricultural, horticultural, aquacultural, silvicultural, floricultural, vermicultural, or viticultural products, including manures, orchard and vineyard prunings, and crop residues.

(6) "Agricultural Material Composting Operation" means an operation that produces compost from green or agricultural material additives, and/or amendments.

(7) "Amendments" means materials added to stabilized or cured compost to provide attributes for certain compost products, such as product bulk, product nutrient value, product pH, and soils blend. Amendments do not include septage, biosolids, or compost feedstock.

(8) "Anaerobic Decomposition" means the biological decomposition of organic substances in the absence of oxygen.

(9) "Biosolids" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Biosolids includes, but is not limited to, treated domestic septage and scum or solids removed in primary, secondary, or advanced wastewater treatment processes. Biosolids does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment works.

(10) "Chipping and Grinding Operations and Facilities" means an operation or facility, that does not produce compost, that mechanically reduces the size or otherwise engages in the handling, of compostable material and:

(A) The site does the following:

1. The site handles only material, excluding manure, allowed at a green material composting operation or facility as set forth in section 17852(a)(22); and,

2. Each load of green material is removed from the site within 48 hours of receipt. The EA may allow a site to keep green material on-site for up to 7 days if the EA determines that the additional time does not increase the potential for violations of this Chapter.

(B) If the site fails to meet the definition of green material because it exceeds the contamination limits in section 17852(a)(21), the site shall be regulated as set forth in the Transfer/Processing Regulatory requirements (commencing at section 17400).

(C) If the site fails to meet the definition of this section because the green material remains on-site for a longer period of time than is allowed, then the site shall be regulated as a compostable material handling operation or facility, as set forth in this Chapter.

(11) "Compostable Material" means any organic material that when accumulated will become active compost as defined in section 17852(a)(1).

(12) "Compostable Materials Handling Operation" or "Facility" means an operation or facility that processes, transfers, or stores compostable material. Handling of compostable materials results in controlled biological decomposition. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstocks, and chipped and ground materials. "Compostable Materials Handling Operation or Facility" does not include activities excluded from regulation in section 17855. "Compostable Materials Handling Operation or Facility" also includes:

(A) agricultural material composting operations;

(B) green material composting operations and facilities;

(C) research composting operations; and,

(D) chipping and grinding operations and facilities.

(13) "Curing" means the final stage of the composting process that occurs after compost has undergone pathogen reduction, as described in section 17868.3, and after most of the readily metabolized material has been decomposed and stabilized.

(14) "Domestic Sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

(15) "Disposal" means:

(A) stockpiling of compostable material onto land for a combined period of time greater than six months, or agricultural and green material for twelve months on prime agricultural land as defined in Government Code section 51201, unless the RWQCB in consultation with the EA makes a written finding that the material may remain within the operations area for a period of time greater than specified.

(B) disposal does not include the use of compostable material for alternative daily cover material at a solid waste landfill. Notwithstanding this section, use of compostable organic material as a alternative daily cover material shall still require approval for use pursuant to Title 27, California Code of Regulations, section 20680 and may require additional approvals from other governmental agencies, including, but not limited to RWQCB and Air Districts.

(C) disposal does not include land application of compostable organic material. "Land Application" means the application of compostable material, excluding food material or mixed solid waste for the following applications: to forest, agricultural, and range land at agronomic rates; in accordance with California Department of Food and Agriculture (CDFA) requirements for beneficial use as authorized by Food and Agricultural Code section 14501 et seq.; or for beneficial uses that may be otherwise exempt or excluded from regulation by CDFA.

(D) Should the EA have information that a compostable material handler is engaging in other activities that meet the definition of disposal, the burden of proof shall be on the land owner or operator to demonstrate otherwise.

(E) If the activities at a site meet the definition of disposal, the site shall be regulated as set forth in the Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste (commencing at Title 27, California Code of Regulations, section 20005).

(16) "Dry Weight Basis" means weight calculated on the basis of having been dried until reaching a constant mass, that results in essentially 100 percent solids content.

(17) "Enclosed Composting Process" means a composting process where the area that is used for the processing, composting, stabilizing, and curing of organic materials, is covered on all exposed sides and rests on a stable surface with environmental controls for moisture and airborne emissions present.

(18) "EA" means enforcement agency.

(19) "Feedstock" means any compostable organic material used in the production of compost or chipped and ground material including, but not limited to, agricultural material, green material, food material, biosolids, and mixed solid waste. Feedstocks shall not be considered as either additives or amendments.

(20) "Food Material" means any material that was acquired for animal or human consumption, is separated from the municipal solid waste stream, and that does not meet the definition of "agricultural material." Food material may include material from food facilities as defined in Health and Safety Code section 113785, grocery stores, institutional cafeterias (such as, prisons, schools and hospitals) or residential food scrap collection.

(21) "Green Material" means any plant material that is separated at the point of generation contains no greater than 1.0 percent of physical con-

taminants by weight, and meets the requirements of section 17868.5. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. Green material does not include food material, biosolids, mixed solid waste, material processed from commingled collection, wood containing lead–based paint or wood preservative, mixed construction or mixed demolition debris.

(22) "Green Material Composting Operation" or "Facility" is an operation or facility that composts green material, additives, and/or amendments. A green material composting operation or facility may also handle manure and paper products. An operation or facility that handles a feedstock that is not green material, manure, or paper products, shall not be considered a green material composting operation or facility. "Green Material Composting Operation" or "Facility" does not include activities excluded from regulation in section 17855.

(23) "Handling" means the processing, transfer, and storage of compostable materials. Handling of compostable materials results in controlled biological decomposition. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstocks, and chipped and ground materials.

(24) "Insulating Material" means material used for the purpose of minimizing the loss of heat from a compost pile undergoing the "Process to Further Reduce Pathogens" (PFRP), as described in section 17868.3. Insulating material includes, but is not limited to, soil and stabilized compost.

(25) "Manure" is an agricultural material and means accumulated herbivore or avian excrement. This definition shall include feces and urine, and any bedding material, spilled feed, or soil that is mixed with feces or urine.

(26) "Mixed Solid Waste" means any material that is part of the municipal solid waste stream, and is mixed with or contains non–organics, processed industrial materials, or plastics. A feedstock that is not source separated or contains 1.0% or more of physical contaminants by weight is mixed solid waste. Compostable material that contains mixed demolition or mixed construction debris shall be considered mixed solid waste.

(27) "Mushroom Farm" means an activity that produces mushrooms. The handling of compostable material at a mushroom farm prior to and after use as a growth medium is subject to regulation pursuant to this chapter and is not considered mushroom farming.

(28) "Operations Area" means the following areas within the boundary of a compostable material handling operation or facility:

(A) equipment cleaning, maintenance, and storage areas;

(B) feedstock, active, curing and stabilized compost processing or stockpiling areas; and

(C) process water and stormwater drainage control systems.

(29) "Operator" means the owner, or other person who through a lease, franchise agreement or other arrangement with the owner, becomes legally responsible for the following:

(A) complying with regulatory requirements set forth in this Chapter;

(B) complying with all applicable federal, state and local requirements;

(C) the design, construction, and physical operation of the site; and

(D) site restoration.

(30) "Owner" means the person or persons who own, in whole or in part, a compostable material handling operation or facility, or the land on which these operations or facilities are located.

(31) "Pathogenic Organism" means disease–causing organisms.

(32) "Physical Contamination" or "Contaminants" means human–made inert products contained within feedstocks, including, but not limited to, glass, metal, and plastic.

(33) "Process Water" means liquid that is generated during or used in the production of compost or chipped and ground materials.

(34) "Research Composting Operation" means a composting operation, that is operated for the purpose of gathering research information on composting.

(35) "Separated At The Point of Generation" includes material separated from the solid waste stream by the generator of that material. It may also include material from a centralized facility as long as that material was kept separate from the waste stream prior to receipt by that facility and the material was not commingled with other materials during handling.

(36) "Stabilized Compost" means any organic material that has undergone the Process to Further Reduce Pathogens (PFRP), as described in section 17868.3, and has reached a stage of reduced biological activity as indicated by reduced temperature and rate of respiration below that of active compost.

(37) "Static Pile" means a composting process that is similar to the aerated static pile except that the air source may or may not be controlled.

(38) "Vector" includes any insect or other arthropod, rodent, or other animal capable of transmitting the causative agents of human disease.

(39) "Vermicomposting" means an activity that produces worm castings through worm activity. The EA may determine whether an activity is or is not vermicomposting. The handling of compostable material prior to and after use as a growth medium is subject to regulation pursuant to this chapter and is not considered vermicomposting.

(40) "Windrow Composting Process" means the process in which compostable material is placed in elongated piles. The piles or "windrows" are aerated and/or mechanically turned on a periodic basis.

(41) "Within–vessel Composting Process" means a process in which compostable material is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under uniform conditions of temperature and moisture where air–borne emissions are controlled.

(42) "Wood Waste" means solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, processing or storage of raw wood materials, or construction and demolition activities.

(43) "Yard Trimmings" means any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of subsections (k), (*l*) and (t), new subsection (x2), and amendment of subsections (aa)(2) and (*ll*) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (k), (*l*) and (t), new subsection (x2), and amendment of subsections (aa)(2) and (*ll*) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order, including repealer of subsection (x2) and further amendment of subsection (aa)(2), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsections (a)(5), (a)(11)–(13), (a)(15)–(16), (a)(21)–(22), (a)(24), (a)(36) and (a)(41) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17853. Definitions.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40116, 43020 and 43200, et seq., Public Resources Code.

HISTORY

1. Repealer filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17853.0. Approval of Alternatives.

(a) Approvals, determinations and other requirements that the EA is authorized to make in this Chapter shall be provided in writing by the EA to the operator. The operator shall place a copy of these approvals, in

addition to those records identified in sections 17869, in the operating record.

(b) Some of the provisions of this Chapter allow the EA to approve a reduced inspection frequency. The EA shall only approve a reduced inspection frequency if the EA finds that it is as protective of the public health and safety and the environment as the standard inspection frequency.

(c) Some of the standards contained in this Chapter allow the EA to approve an alternative method of compliance with the standard. These provisions are not intended to allow the EA to change the particular standard, but are intended to allow the EA flexibility to approve, in advance, an alternative method of meeting the existing standard. For facilities that require a full solid waste facilities permit, the EA may choose to include the approved method as a term and condition of the solid waste facilities permit, rather than in the manner authorized by subdivision (a) of this section. If the method is included in the Compostable Materials Handling Facility Permit, a change to the method may require a revision to the solid waste facilities permit in accordance with the procedures set forth in Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2, 3, and 3.1 (commencing with section 21570).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

Article 2. Regulatory Tiers for Composting Operations and Facilities

§ 17854. Compostable Materials Handling Facility Permit Requirements.

Except as specified in this Article, all compostable materials handling activities shall obtain a Compostable Materials Handling Facility Permit pursuant to the requirements of Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1,2,3, and 3.1 (commencing with section 21450) prior to commencing operations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17855. Excluded Activities.

(a) The activities listed in this section do not constitute compostable material handling operations or facilities for the purposes of this Chapter and are not required to meet the requirements set forth herein. Nothing in this section precludes the EA or the board from inspecting an excluded activity to verify that the activity is being conducted in a manner that qualifies as an excluded activity or from taking any appropriate enforcement action.

(1) An activity is excluded if it handles agricultural material, derived from an agricultural site, and returns a similar amount of the material produced to that same agricultural site, or an agricultural site owned or leased by the owner, parent, or subsidiary of the composting activity. No more than an incidental amount of up to 1,000 cubic yards of compost product may be given away or sold annually.

(2) Vermicomposting is an excluded activity. The handling of compostable material prior to and after use as a growth medium is not an excluded activity and is subject to the requirements of this chapter. Handling of agricultural material on the site of a vermicomposting activity, for use as a growth medium on that same site, is an excluded activity if it complies with section 17855(a)(1).

(3) Mushroom farming is an excluded activity. The handling of compostable material prior to and after use as a growth medium is not an excluded activity and is subject to the requirements of this chapter. Handling of agricultural material on the site of a mushroom farm, for use as mushroom bedding on that same site, is an excluded activity if it complies with section 17855(a)(1).

(4) Handling of green material, feedstock, additives, amendments, compost, or chipped and ground material is an excluded activity if 500 cubic yards or less is on–site at any one time, the compostable materials are generated on–site and if no more than 1,000 cubic yards of materials are either sold or given away annually. The compostable material may also include up to 10% food material by volume.

(5) The handling of compostable materials is an excluded activity if:

(A) the activity is located at a facility (i.e., landfill or transfer/processing facility) that has a tiered or full permit as defined in section 18101,

1. has a Report of Facility Information which is completed and submitted to the EA that identifies and describes the activity and meets the requirements of Titles 14 or 27; and,

2. will only use the material on the facility site, or

(B) the activity is solely for the temporary storage of biosolids sludge at a Publicly Operated Treatment Works (POTW), or

(C) the activity is located at the site of biomass conversion and is for use in biomass conversion as defined in Public Resources Code section 40106; or

(D) the activity is part of a silvicultural operation or a wood, paper, or wood product manufacturing operation; or

(E) the activity is part of an agricultural operation and is used to temporarily store or process agricultural material not used in the production of compost or mulch; or

(F) the activity is part of an operation used to chip and grind materials derived from and applied to lands owned or leased by the owner, parent, or subsidiary of the operation; or

(G) the activity is part of an agricultural operation used to chip and grind agricultural material produced on lands owned or leased by the owner, parent, or subsidiary of the agricultural operation, for use in biomass conversion; or

(H) the activity is part of an animal food manufacturing or rendering operation.

(I) the activity is the storage of yard trimmings at a publicly designated site for the collection of lot clearing necessary for fire protection provided that the public agency designating the site has notified the fire protection agency; or

(J) the materials are handled in such a way to preclude their reaching temperatures at or above 122 degrees Fahrenheit as determined by the EA.

(6) Non–commercial composting with less than one cubic yard of food material is excluded provided that all compostable material is generated and used on–site.

(7) Storage of bagged products from compostable material is an excluded activity provided that such bags are no greater than 5 cubic yards.

(8) Within–vessel composting process activities with less than 50 cubic yard capacity are excluded.

(9) Beneficial use of compostable materials is an excluded activity. Beneficial use includes, but is not limited to, slope stabilization, weed suppression, alternative daily cover, and similar uses, as determined by the EA; land application in accordance with California Department of Food and Agriculture requirements for a beneficial use as authorized by Food and Agricultural Code section 14501 et seq.; and reclamation projects in accordance with the requirements of the Office of Mine Reclamation of the Department of Conservation as authorized by Public Resources Code section 2770 et seq.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).

2. Repealer, relocation and new section and amendment of article 2 heading filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

3. Amendment of subsections (a)(3) and (a)(5) and new subsections (a)(6) and (a)(7) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.

4. Amendment of subsections (a)(3) and (a)(5) and new subsections (a)(6) and (a)(7) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–7–97 order, including further amendment of subsections (a)(3) and (a)(5)–(7), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
6. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
7. Change without regulatory effect amending subsections (a), (a)(5)(A), (a)(5)(A)2., (a)(5)(B) and (a)(7) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17855.2. Prohibitions.

(a) The composting of unprocessed mammalian tissue, including but not limited to, flesh, organs, hide, blood, bone and marrow is prohibited, except when from the food service industry, grocery stores, or residential food scrap collection, or as part of a research composting operation for the purpose of obtaining data on pathogen reduction or other public health, animal health, safety, or environmental concern, in accordance with section 17862.

(b) The composting of medical waste is prohibited.

(c) The composting of hazardous waste is prohibited.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Amendment of subsection (a) filed 6–18–2007 as an emergency; operative 6–18–2007 (Register 2007, No. 25). A Certificate of Compliance must be transmitted to OAL by 12–17–2007 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled 12–17–2007 as an emergency; operative 12–17–2007 (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL by 3–17–2008 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–17–2007 order, including further amendment of subsection (a), transmitted to OAL 3–13–2008 and filed 4–25–2008 (Register 2008, No. 17).

§ 17855.3. Permit Name.

Any permit issued pursuant to this Article, except for one issued pursuant to section 17862.1(b), shall be entitled: "Compostable Materials Handling Facility Permit."

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17855.4. Pre–Existing Permits and Notifications.

(a) If a facility had previously obtained a Registration or Standardized Permit in accordance with the regulations in effect prior to April 4, 2003, that facility may continue to operate in accordance with its permit until the EA conducts a permit review pursuant to Title 14, California Code of Regulations, sections 18104.7 and 18105.9 and determines that a Compostable Materials Handling Facility Permit is required. If the EA makes such a determination, the operator shall comply with the Compostable Materials Handling Facility Permit requirements set forth in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1, 2, 3, and 3.1 (commencing with section 21450) within two years of that determination.

(b) If an operation had previously been operating pursuant to an EA Notification in accordance with the regulations in effect prior to April 4, 2003, that operation may continue to operate in accordance with its EA Notification or regulatory authorization until the EA determines that a Compostable Materials Handling Facility Permit is required. The EA shall make this determination no sooner than 120 days and no later than two years from April 4, 2003. If the EA determines that a Compostable Materials Handling Facility Permit is required, the operator shall comply with the Compostable Materials Handling Facility Permit requirements set forth in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1, 2, 3, and 3.1 (commencing with section 21450) within two years of that determination.

(c) If an activity had previously been excluded from the regulations in effect prior to April 4, 2003, that activity may continue to operate in accordance with its regulatory exclusion until the EA determines that a Compostable Materials Handling Facility Permit is required. The EA shall make this determination no sooner than 120 days and no later than two years from April 4, 2003. If EA determines that a Compostable Materials Handling Facility Permit is required, the operator shall comply with the Compostable Materials Handling Facility Permit requirements set forth in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1, 2, 3, and 3.1 (commencing with section 21450) within two years of that determination.

(d) Notwithstanding other provisions of this section, a Chipping and Grinding activity that is currently operating in accordance with the regulations in effect prior to April 4, 2003, may continue to operate in accordance with its regulatory authorization until the EA determines that a different authorization is required. The EA shall make this determination within 120 days from April 4, 2003.

(1) If the EA determines that the activity is required to comply with the EA Notification requirements, the operator shall comply with the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100), within 120 days from that determination.

(2) If the EA determines that the activity is required to comply with the Registration requirements, the operator shall comply with the Registration requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100) within 120 days from that determination.

(3) If the EA determines that the activity is required to comply with the Compostable Materials Handling Facility Permit requirements, the operator shall comply with the Compostable Materials Handling Facility Permit requirements set forth in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1, 2, 3, and 3.1 (commencing with section 21450) within two years from that determination.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending subsections (a), (c) and (d)–(d)(3) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17856. Agricultural Material Composting Operations.

(a) All agricultural material composting operations and chipping and grinding operations shall comply with the Enforcement Agency Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100), except as otherwise provided by this Chapter. Agricultural Compostable Materials Handling Operations shall only be subject to the requirements of section 17863.4 if the EA makes a written determination that the operation has violated the requirements for odor impacts of section 17867.

(b) Compost produced by an agricultural material composting operation or a chipping and grinding operation which uses only agricultural material may be sold or given away in unrestricted quantities. These operations shall be inspected by the EA at least once annually.

(c) Compost produced by an agricultural material composting operation which uses agricultural material and/or green material, as specified in section 17852(a)(21), may be sold or given–away in accordance with the following restrictions.

(1) Those sites that do not sell or give–away more than 1,000 cubic yards of material per year shall be inspected by the EA at least once annually when actively composting. If more than 12,500 cubic yards of green material, including feedstock, compost, or chipped and ground material, is to be handled on–site of productive farmland as defined in Government

Code section 51201, the operator shall give advance notice to the EA. The EA shall only prohibit the on-site storage of additional materials, or impose a greater inspection frequency, if the EA makes a written finding that it will pose an additional risk to public health and safety and the environment. The EA shall forward a copy of the request and approval to the Board.

(2) Those operations that sell or give-away more than 1,000 cubic yards of material per year, shall have no more than 12,500 cubic yards of green material, including feedstock, compost, or chipped and ground material, on-site at any one time and shall be inspected by the EA once every three (3) months.

(3) These sites shall record the quantity received of green material.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 2 and section filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
2. Repealer and new section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
3. Amendment of subsection (c) filed 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-97 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c) refiled 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-1-97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-7-97 order transmitted to OAL 11-25-97 and filed 1-9-98 (Register 98, No. 2).
6. Amendment filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
7. Change without regulatory effect amending subsections (a), (c) and (c)(1) filed 8-23-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17857. Green Material Composting Operations and Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
2. Repealer and new section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
3. Amendment of subsection (c) filed 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-97 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c) refiled 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-1-97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-7-97 order transmitted to OAL 11-25-97 and filed 1-9-98 (Register 98, No. 2).
6. Repealer filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17857.1. Green Material Composting Operations and Facilities.

(a) A green material composting operation that has up to 12,500 cubic yards of feedstock, compost, or chipped and ground material on-site at any one time shall comply with the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100).

(b) A green material composting operation that has up to 12,500 cubic yards of feedstock, compost, or chipped and ground material on-site at any one time shall be inspected by the EA at least once every three (3) *months, unless an operator request for a reduced inspection frequency of* no less than annually is approved by the EA. The EA shall only approve a lesser inspection frequency, if the EA finds that it will not pose an additional risk to public health and safety and the environment. The EA shall forward a copy of the request and approval to the Board.

(c) A green material composting facility that has more than 12,500 cubic yards of feedstock, compost, or chipped and ground material on-site at any one time shall obtain a Compostable Materials Handling Facility Permit pursuant to the requirements of Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1,2,3, and 3.1 (commencing with section 21450) prior to commencing operations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending subsection (a) filed 8-23-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17858. Animal Material Composting Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
2. Amendment of subsection (b) filed 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b) refiled 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-1-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-7-97 order transmitted to OAL 11-25-97 and filed 1-9-98 (Register 98, No. 2).
5. Repealer filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17859. Sewage Sludge Composting Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code. Title 40, Chapter I, Subchapter O, Part 503, of the Code of Federal Regulations.

HISTORY

1. New section filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
2. Repealer and new section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
3. Amendment of subsection (b) filed 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-5-97 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b) refiled 4-7-97 as an emergency; operative 4-7-97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-1-97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4-7-97 order transmitted to OAL 11-25-97 and filed 1-9-98 (Register 98, No. 2).
6. Repealer filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17859.1. Biosolids Composting at POTWs.

(a) Except as provided in section 17855(a)(5)(B), the composting of biosolids on-site at a Publicly Operated Treatment Works (POTW) shall comply with the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100).

(b) All other composting of biosolids shall comply with section 17854.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code; and Title 40, Chapter I, Subchapter O, Part 503, Code of Federal Regulations.

HISTORY

1. New section filed 4-4-2003; operative 4-4-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending subsection (a) filed 8-23-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17860. Mixed Solid Waste Composting Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6-30-95; operative 7-30-95 (Register 95, No. 26).
2. Change without regulatory effect amending section filed 3-8-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

3. Repealer filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17861. Application Process for Green Compost Permit.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40057, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17862. Research Composting Operations.

(a) An operator conducting research composting operations shall not have more than 5,000 cubic yards of feedstock, additives, amendments, chipped and ground material, and compost on–site at any one time, and shall comply with the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100), except as otherwise provided by this Chapter.

(b) An operator conducting research composting operations utilizing within–vessel processing, may exceed 5,000 cubic–yards of feedstock, additives, amendments, chipped and ground material and compost, if the EA determines that such increased volume will not pose additional risk to the public health, safety and the environment.

(c) In addition to the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0, section 18103.1(a)(3), the operator shall provide a description of the research to be performed, research objectives, methodology/protocol to be employed, data to be gathered, analysis to be performed, how the requirements of this subchapter will be met, and the projected timeframe for completion of the research operation.

(d) The EA Notification for a research composting operation shall be reviewed after each each two year period of operation. Review criteria shall include the results and conclusions drawn from the research.

(e) Research composting operations that will be using unprocessed mammalian tissue as a feedstock for the purpose of obtaining data on pathogen reduction or other public health, animal health, safety, or environmental protection concern, shall satisfy the following additional requirements:

(1) Unprocessed mammalian tissue used as feedstock shall be generated from on–site agricultural operations, and all products derived from unprocessed mammalian tissue shall be beneficially used on–site.

(2) The operator shall prepare, implement and maintain a site–specific, research composting operation site security plan. The research composting site security plan shall include a description of the methods and facilities to be employed for the purpose of limiting site access and preventing the movement of unauthorized material on to or off of the site.

(3) The EA Notification for the research composting operation using unprocessed mammalian tissue as feedstock and documentation of additional requirements of this section shall be reviewed after each six month period of operation.

(f) The operator shall submit all additional documentation required by subsections (c) and (e)(2) to the EA with the Notification and prior to the composting of any feedstock. The EA shall determine that the EA Notification for research composting operations is complete and correct only if the additional documentation requirements of this section have been met.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
3. Change without regulatory effect amending subsections (a) and (c) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).
4. New subsections (e)–(f) filed 6–18–2007 as an emergency; operative 6–18–2007 (Register 2007, No. 25). A Certificate of Compliance must be transmitted to OAL by 12–17–2007 or emergency language will be repealed by operation of law on the following day.
5. New subsections (e)–(f) refiled 12–17–2007 as an emergency; operative 12–17–2007 (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL by 3–17–2008 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–17–2007 order, including further amendment of subsection (e), transmitted to OAL 3–13–2008 and filed 4–25–2008 (Register 2008, No. 17).

§ 17862.1. Chipping and Grinding Operations and Facilities.

(a) A chipping and grinding operation that receives up to 200 tons per day of material that may be handled by a green material composting operation shall comply with the EA Notification requirements set forth in Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0 (commencing with section 18100), except as otherwise provided by this Chapter.

(b) A chipping and grinding facility that receives more than 200 tons per day, and up to 500 tons per day of material that may be handled by a green material composting operation shall obtain a Registration Permit pursuant to the requirements of Title 14, California Code of Regulations, Division 7, Chapter 5.0, Article 3.0, prior to commencing operations.

(c) A chipping and grinding facility that receives more than 500 tons per day of material that may be handled by a green material composting operation shall obtain a Compostable Materials Handling Facility Permit pursuant to the requirements of Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1,2,3, and 3.1 (commencing with section 21450) prior to commencing operations.

(d) A chipping and grinding operation or facility shall not be subject to the provisions of sections 17868.1 through 17868.3 of this Chapter.

(e) If a chipping and grinding operation or facility exceeds the contamination limits in section 17852 (a)(21), it shall be regulated as set forth in the Transfer/Processing Regulatory requirements (commencing at section 17400).

(f) If a chipping and grinding operation or facility stores material for a longer period of time than is allowed by section 17852 (a)(10)(A)(2), then the site shall be regulated as a green material handling operation or facility, as set forth in this Chapter.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–7–97 order, including amendment of subsections (b)(2)–(4) and new subsections (b)(5)–(c), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
4. Amendment of section heading and section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
5. Change without regulatory effect amending subsections (a) and (b) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17862.2. Storage.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–7–97 order, including amendment of subsections (a) and (b)(2)–(4), new subsection (b)(6), amendment of subsection (c) and new subsection (d), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).

4. Repealer filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

Article 3. Report of Facility Information

§ 17863. Report of Composting Site Information.

Each operator of a compostable material handling facility that is required to obtain a Compostable Materials Handling Facility Permit, as specified in Article 2 of this Chapter, shall, at the time of application, file a Report of Composting Site Information with the EA. If the operator intends to alter the permitted feedstock, these changes must be reported to the EA for maintenance of permit status. Such changes may become the basis for revisions to the permit or for revocation of the permit.

(m) A description of the proposed site restoration activities, in accordance with Section 17870.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 3 and section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of subsection (f) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (f) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17863.4. Odor Impact Minimization Plan.

(a) All compostable material handling operations and facilities shall prepare, implement and maintain a site–specific odor impact minimization plan. A complete plan shall be submitted to the EA with the EA Notification or permit application.

(b) Odor impact minimization plans shall provide guidance to on–site operation personnel by describing, at a minimum, the following items. If the operator will not be implementing any of these procedures, the plan shall explain why it is not necessary.

(1) an odor monitoring protocol which describes the proximity of possible odor receptors and a method for assessing odor impacts at the locations of the possible odor receptors; and,

(2) a description of meteorological conditions effecting migration of odors and/or transport of odor–causing material off–site. Seasonal variations that effect wind velocity and direction shall also be described; and,

(3) a complaint response protocol; and,

(4) a description of design considerations and/or projected ranges of optimal operation to be employed in minimizing odor, including method and degree of aeration, moisture content of materials, feedstock characteristics, airborne emission production, process water distribution, pad and site drainage and permeability, equipment reliability, personnel training, weather event impacts, utility service interruptions, and site specific concerns; and,

(5) a description of operating procedures for minimizing odor, including aeration, moisture management, feedstock quality, drainage controls, pad maintenance, wastewater pond controls, storage practices (e.g., storage time and pile geometry), contingency plans (i.e., equipment, water, power, and personnel), biofiltration, and tarping.

(c) The odor impact minimization plan shall be revised to reflect any changes, and a copy shall be provided to the EA, within 30 days of those changes.

(d) The odor impact minimization plans shall be reviewed annually by the operator to determine if any revisions are necessary.

(e) The odor impact minimization plan shall be used by the EA to determine whether or not the operation or facility is following the procedures established by the operator. If the EA determines that the odor impact minimization plan is not being followed, the EA may issue a Notice and Order (pursuant to section 18304) to require the operator to either comply with the odor impact minimization plan or to revise it.

(f) If the odor impact minimization plan is being followed, but odor impacts are still occurring, the EA may issue a Notice and Order (pursuant to section 18304) requiring the operator to take additional reasonable and feasible measures to minimize odors.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43209.1, Public Resources Code. Reference: Sections 43020, 43021 and 43209.1,

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending subsection (e) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

Article 4. Standardized Composting Permit Terms and Conditions

§ 17864. General Terms and Conditions.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 4, section and Appendix I filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Change without regulatory effect amending section and moving form to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Change without regulatory effect amending section filed 2–6–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
4. Repealer of article 4 (section 17864) and repealer of section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

Article 5. Composting Operation and Facility Siting and Design Standards

§ 17865. Siting on Landfills.

(a) Compostable materials handling operations and facilities located atop closed solid waste landfills shall meet postclosure land use requirements pursuant to Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 3, Subchapter 5, Article 2, section 21190.

(b) Compostable materials handling operations and facilities sited on intermediate cover on a solid waste landfill shall locate operations areas on foundation substrate that is stabilized, either by natural or mechanical compaction, to minimize differential settlement, ponding, soil liquefaction, or failure of pads or structural foundations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5 and section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
3. Change without regulatory effect amending subsection (a) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17866. General Design Requirements.

(a) Compostable materials handling operations and facilities shall be designed and constructed in such a manner as to enable the operations and facilities to comply with the operational requirements set forth in Article 6 of this Chapter.

(b) The design of a compostable materials handling facility shall utilize advice, as appropriate, from persons competent in engineering architecture, landscape design, traffic engineering, air quality control, and design of structures.

(1) The engineering design of a compostable materials handling facility shall be in accordance with the principles and disciplines in the State of California generally accepted for design of this type of facility. The

design of a composting facility requiring a Compostable Materials Handling Facility Permit shall accompany the Report of Composting Site Information, pursuant to section 17863 of this Chapter.

(2) The engineering design shall be based on appropriate data regarding the service area, anticipated nature and quantity of material to be received, climatological factors, physical settings, adjacent land use (existing and planned), types and numbers of vehicles anticipated to enter the station, drainage control, the hours of operation and other pertinent information. If the station is to be used by the general public, the design of the facility shall take account of features that may be needed to accommodate such public use.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
3. Change without regulatory effect amending subsection (b)(1) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

Article 6. Composting Operating Standards

§ 17867. General Operating Standards.

(a) All compostable materials handling operations and facilities shall meet the following requirements:

(1) All handling activities are prohibited from composting any material specified in section 17855.2 of this Chapter.

(2) All handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter, hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulates, and pathogenic organisms.

(3) Random load checks of feedstocks, additives, and amendments for contaminants shall be conducted.

(4) Contamination of compostable material that has undergone pathogen reduction, pursuant to section 17868.3 of this Chapter, with feedstocks, compost, or wastes that have not undergone pathogen reduction, pursuant to section 17868.3 of this Chapter, or additives shall be prevented.

(5) Unauthorized human or animal access to the facility shall be prevented.

(6) Traffic flow into, on, and out of the composting operation or facility shall be controlled in a safe manner.

(7) All compostable materials handling operations and facilities, that are open for public business, shall post legible signs at all public entrances. These signs shall include the following information:

(A) name of the operation or facility,

(B) name of the operator,

(C) facility hours of operation,

(D) materials that will and will not be accepted, if applicable,

(E) schedule of charges, if applicable, and

(F) phone number where operator or designee can be reached in case of an emergency.

(8) The operator shall provide fire prevention, protection and control measures, including, but not limited to, temperature monitoring of windrows and piles, adequate water supply for fire suppression, and the isolation of potential ignition sources from combustible materials. Firelanes shall be provided to allow fire control equipment access to all operation areas.

(9) The operator shall provide telephone or radio communication capability for emergency purposes.

(10) Physical Contaminants and refuse removed from feedstock, compost, or chipped and ground material shall be removed from the site within 7 days and transported to an appropriate facility.

(11) Enclosed operations and facilities shall provide ventilation to prevent adverse public health effects from decomposition gases.

(12) The operator shall ensure that leachate is controlled to prevent contact with the public.

(13) The operator shall prevent or remove physical contaminants in compost and chipped and ground materials that may cause injury to humans.

(14) An attendant shall be on duty during business hours if the operation or facility is open to the public.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. New article 6 and repealer and new section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
3. Amendment of subsection (a)(4) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a)(4) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–7–97 order transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
6. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
7. Change without regulatory effect amending subsection (a)(4) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).
8. Repealer and new subsection (a)(1) filed 6–18–2007 as an emergency; operative 6–18–2007 (Register 2007, No. 25). A Certificate of Compliance must be transmitted to OAL by 12–17–2007 or emergency language will be repealed by operation of law on the following day.
9. Repealer and new subsection (a)(1) refiled 12–17–2007 as an emergency; operative 12–17–2007 (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL by 3–17–2008 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12–17–2007 order transmitted to OAL 3–13–2008 and filed 4–25–2008 (Register 2008, No. 17).

§ 17867.5. Training.

(a) Compostable materials handling operations and facilities shall meet the following requirements:

(1) Operators shall ensure that all personnel assigned to the operation shall be trained in subjects pertinent to operations and maintenance, including the requirements of this article, physical contaminants and hazardous materials recognition and screening, with emphasis on odor impact management and emergency procedures. A record of such training shall be maintained on the site.

NOTE: Authority cited: Sections 40502, 43020, and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

Article 7. Environmental Health Standards

§ 17868.1. Sampling Requirements.

All composting operations that sell or give away greater than 1,000 cubic yards of compost annually, and all facilities shall meet the following requirements:

(a) Operators shall verify that compost meets the maximum acceptable metal concentration limits specified in section 17868.2, and pathogen reduction requirements specified in section 17868.3. Verification of pathogen reduction requirements shall occur at the point where compost is sold and removed from the site, bagged for sale, given away for beneficial use and removed from the site or otherwise beneficially used. This verification shall be performed by taking and analyzing at least one composite sample of compost, following the requirements of this section as follows:

(1) An operator who composts green material, food material, or mixed solid waste shall take and analyze one composite sample for every 5,000 cubic–yards of compost produced.

(2) An operator who composts biosolids shall meet the sampling schedule described in Table 1 below.

Table 1 - Frequencies of Compost Sampling for Biosolids Composting Facilities

Amount of Biosolids Compost Feedstock (metric tons per 365 day period)	*Frequency*
Greater than zero but fewer than 290	annually
Equal to or greater than 290 but fewer than 1,500	quarterly
Equal to or greater than 1,500 but fewer than 15,000	bimonthly
Amount of Biosolids Compost Feedstock (metric tons per 365 day period)	*Frequency*
Equal to or greater than 15,000	monthly

(A) The amount of biosolids compost feedstock shall be calculated in dry weight metric tons.

(3) Composite sample analysis for maximum acceptable metal concentrations, specified in section 17868.2, shall be conducted at a laboratory certified by the California Department of Health Services, pursuant to the Health and Safety Code.

(b) A composite sample shall be representative and random, and may be obtained by taking twelve (12) mixed samples as described below.

(1) The twelve samples shall be of equal volume.

(2) The twelve samples shall be extracted from within the compost pile as follows:

(A) Four samples from one–half the width of the pile, each at a different cross–section;

(B) Four samples from one–fourth the width of the pile, each at a different cross–section; and,

(C) Four samples from one–eighth the width of the pile, each at a different cross–section.

(c) The EA may approve alternative methods of sampling for a green material composting operation or facility that ensures the maximum metal concentration requirements of section 17868.2 and the pathogen reduction requirements of section 17868.3 are met.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 7 and section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of subsection (a) and Table 1 filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) and Table 1 refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order, including further amendment of subsection (a), transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsections (a) and (a)(3) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17868.2. Maximum Metal Concentrations.

(a) Compost products derived from compostable materials that contain any metal in amounts that exceed the maximum acceptable metal concentrations shown in Table 2 shall be designated for disposal, additional processing, or other use as approved by state or federal agencies having appropriate jurisdiction.

Table 2—Maximum Acceptable Metal Concentrations

Constituent	*Concentration (mg/kg) on dry weight basis*
Arsenic (As)	41
Cadmium (Cd)	39
Chromium (Cr)	1200
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	36
Zinc (Zn)	2800

(b) Alternative methods of compliance to meet the requirements of Subdivision (a) of this section, including but not limited to sampling frequencies, may be approved by the EA for green and food materials composting operations and facilities if the EA determines that the alternative method will ensure that the maximum acceptable metal concentrations shown in Table 2 are not exceeded.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of first paragraph filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsection (b) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17868.3. Pathogen Reduction.

(a) Compost products derived from compostable materials, that contains pathogens in amounts that exceed the maximum acceptable pathogen concentrations described in Subdivision (b) of this section shall be designated for disposal, additional processing, or other use as approved by state or federal agencies having appropriate jurisdiction.

(b) Operators that produce compost shall ensure that:

(1) The density of fecal coliform in compost, that is or has at one time been active compost, shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), and the density of *Salmonella* sp. bacteria in compost shall be less than three (3) Most Probable Number per four (4) grams of total solids (dry weight basis).

(2) At enclosed or within–vessel composting process operations and facilities, active compost shall be maintained at a temperature of 55 degrees Celsius (131 degrees Fahrenheit) or higher for a pathogen reduction period of 3 days.

(A) Due to variations among enclosed and within–vessel composting system designs, including tunnels, the operator shall submit a system–specific temperature monitoring plan with the permit application to meet the requirements of Subdivision (b)(2) of this section.

(3) If the operation or facility uses a windrow composting process, active compost shall be maintained under aerobic conditions at a temperature of 55 degrees Celsius (131 degrees Fahrenheit) or higher for a pathogen reduction period of 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five (5) turnings of the windrow.

(4) If the operation or facility uses an aerated static pile composting process, all active compost shall be covered with 6 to 12 inches of insulating material, and the active compost shall be maintained at a temperature of 55 degrees Celsius (131 degrees Fahrenheit) or higher for a pathogen reduction period of 3 days.

(c) Alternative methods of compliance to meet the requirements of Subdivision (b) of this section may be approved by the EA if the EA determines that the alternative method will provide equivalent pathogen reduction.

(d) Compost operations and facilities shall be monitored as follows to ensure that the standards in Subdivision (b) of this section are met:

(1) Each day during the pathogen reduction period, at least one temperature reading shall be taken per every 150 feet of windrow, or fraction thereof, or for every 200 cubic–yards of active compost, or fraction thereof.

(2) Temperature measurements for pathogen reduction shall be measured as follows:

(A) Windrow composting processes and agitated bays shall be monitored twelve (12) to twenty–four (24) inches below the pile surface;

(B) Aerated static pile composting processes shall be monitored twelve (12) to eighteen (18) inches from the point where the insulation cover meets the active compost.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of subsections (a) and (b)(1) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a) and (b)(1) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4–7–97 order transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
5. Amendment of subsections (a), (b)(1)–(2) and (c) filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
6. Change without regulatory effect amending subsections (a), (b)(2)(A), (c) and (d) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 17868.4. Clean Green Material Processing Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of first paragraph filed 1–9–98; operative 1–9–98 (Register 98, No. 2).
3. Repealer filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17868.5. Green Material Processing Requirements.

In order for a feedstock to be considered green material, as defined in section 17852(a)(21), the following requirements shall be met:

(a) The feedstock shall undergo load checking to ensure that physical contaminants are no greater than 1.0 percent of total weight. Load checking shall include both visual observation of incoming waste loads and load sorting to quantify percentage of contaminating materials.

(1) A minimum of one percent of daily incoming feedstock volume or at least one truck per day, whichever is greater, shall be inspected visually. If a visual load check indicates a contamination level greater than 1.0 percent, a representative sample shall be taken, physical contaminants shall be collected and weighed, and the percentage of physical contaminants determined. The load shall be rejected if physical contaminants are greater than 1.0 percent of total weight.

(b) Upon request of the EA, the operator shall take a representative sample of feedstock, physical contaminants shall be collected and weighed, and the percentage of physical contaminants determined.

(c) Any agricultural material handling operation using this material shall ensure the feedstock meets the metal concentration limits specified in Table 2 of section 17868.2.

(d) Facility personnel shall be adequately trained to perform the activities specified in this section.

(e) Any operation or facility using this feedstock shall maintain records demonstrating compliance with this section.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending first paragraph and subsection (c) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

Article 8. Composting Operation and Facility Records

§ 17869. General Record Keeping Requirements.

Except as provided in subsection (d), all compostable materials handling operations and facilities shall meet the following requirements:

(a) All records required by this Chapter shall be kept in one location and accessible for five (5) years and shall be available for inspection by authorized representatives of the board, EA local health entity, and other duly authorized regulatory and EAs during normal working hours.

(b) The operator shall record any special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.

(c) The operator shall record any public complaints received by the operator, including:

(1) the nature of the complaint,

(2) the date the complaint was received,

(3) if available, the name, address, and telephone number of the person or persons making the complaint, and

(4) any actions taken to respond to the complaint.

(d) The operator shall record the quantity and type of feedstock received and quantity of compost and chipped and ground material produced. Agricultural compostable materials handling operations shall maintain records only for compostable material accepted from off–site.

(e) The operator shall record the number of load checks performed and loads rejected.

(f) The operator shall record all test results generated by compliance with Article 7 of this Chapter, including but not limited to, metal concentrations, fecal coliform and *Salmonella* sp. densities, temperature measurements, and dates of windrow turnings.

(1) The operator shall retain records detailing pathogen reduction methods.

(g) The operator shall record and retain records of any serious injury to the public occurring on–site and any complaint of adverse health effects to the public attributed to operations. Serious injury means any injury that requires inpatient hospitalization for a period in excess of 24 hours or in which a member of the public suffers a loss of any member of the body or suffers any degree of permanent disfigurement.

(h) The operator shall retain a record of training and instruction completed in accordance with section 17867.5.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 3 and section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer of article 3, new article 8 and repealer and new section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
3. Amendment of subsection (d) filed 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–5–97 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (d) refiled 4–7–97 as an emergency; operative 4–7–97 (Register 97, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–7–97 order transmitted to OAL 11–25–97 and filed 1–9–98 (Register 98, No. 2).
6. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

Article 9. Composting Facility Site Restoration

§ 17870. Site Restoration.

All compostable materials handling operations and facilities shall meet the following requirements:

(a) The operator shall provide the EA written notice of intent to perform site restoration, at least 30 days prior to beginning site restoration.

(b) The operator(s) and owner(s) shall provide site restoration necessary to protect public health, safety, and the environment.

(c) The operator shall ensure that the following site restoration procedures are performed upon completion of operations and termination of service:

(1) The operation and facility grounds, ponds, and drainage areas shall be cleaned of all residues including, but not limited to, compost materials, construction scraps, and other materials related to the operations, and these residues legally recycled, reused, or disposed of.

(2) All machinery shall be cleaned and removed or stored securely.

(3) All remaining structures shall be cleaned of compost materials, dust, particulates, or other residues related to the composting and site restoration operations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New article 9 and section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).
2. Amendment of first paragraph and subsection (a) filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 17871. Geological Siting Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17873. General Facility Design Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021, Public Resources Code; and Sections 6730, 6735.1, 6735.3, and 6735.4, Business and Professions Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17875. General Facility Operations Procedures for Exempted and Non–Exempted Composting Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17876. General Facility Operations Procedures for Non–Exempted Composting Facilities.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17877. Record Maintenance Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17879. Site Closure Standards.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17881. Purpose, Scope, and Applicability.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 4 and section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer of article 4 and section filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17883. Compliance with Laws and Regulations.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17885. General Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code; and 40 CFR, Part 261.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17886. Compliance Period.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17887. Environmental Health Standards.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

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§ 17889. Compliance Monitoring Program.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17891. Noncompliance and Green Composting Permit Modification.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17893. Specific Exemptions.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 17895. Reporting Requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40051, 40052, 40053, 40054, 40055, 40056, 40057, 40116, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

Chapter 3.5. Standards for Handling and Disposal of Asbestos Containing Waste

Article 1. General

§ 17897. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to establish minimum standards that define the acceptable management of asbestos containing waste. The standards of this chapter apply only to the owner or operator of a solid waste facility who disposes of asbestos containing waste, pursuant to Health and Safety Code section 25143.7.

(b) Nothing in these Articles shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or reports, or other requirements of other regulatory or enforcement agencies, including but not limited to, local health agencies, regional water quality control boards, air quality management districts or air pollution control districts, local land use authorities, and fire authorities.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New chapter 3.5 (articles 1–5, sections 17897–17897.25), article 1 (sections 17897–17897.15) and section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order, including new subsection (a) designator and new subsection (b), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 17897.10. Definitions.

The following definitions are to used only for the purposes of this Chapter.

"Adequately wet" means waste that is sufficiently mixed or penetrated with liquid to prevent the release of finely divided particles. Spraying water over the surface of asbestos containing waste does not satisfy "adequately wet" requirement.

"Asbestos Containing Waste" or "ACW" means asbestos containing waste managed at a landfill as authorized by section 25143.7, chapter 6.5 of the California Health and Safety Code which contains greater than one percent (1%) friable asbestos by weight. Asbestos containing waste does not include waste contaminated with another hazardous waste as identified in chapter 11. division 4.5, title 22, California Code of Regulations.

"Designated Asbestos Containing Waste Disposal Area" means an area specifically designated for the disposal of asbestos containing waste at a solid waste facility. A specifically designated area is a dedicated disposal area. The area shall be identified on a survey plat containing the location and dimensions of the area with respect to permanently surveyed vertical and horizontal control monuments. This survey plat shall be prepared and certified by a professional land surveyor licensed in California or a civil engineer authorized to practice land surveying in California. The designated area shall be delineated with physical barriers, such as a fence, and signs.

"Disposal" means the final deposition of asbestos containing waste onto the land, into the atmosphere or into the waters of the state.

"Enforcement Agency" means the California Integrated Waste Management Board or its designee.

"Excavation" means any activity that exposes buried asbestos containing waste to the atmosphere.

"Handling" means the collection, processing, treatment, or packaging of asbestos containing waste for disposal.

"Leak tight" means that solids or liquids cannot escape or spill out. It also means dust tight.

"Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes, or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

"Solid waste facility" means any class II or class III landfill as defined in sections 2532 and 2533, chapter 15, title 23, California Code of Regulations (CCR); and any unclassified waste management unit which accepts inert waste as defined in section 2524, chapter 15, title 23, CCR.

"Visible emissions" means any emissions that are visually detectable without the aid of instrument, coming from asbestos containing waste or from handling and disposal of asbestos containing waste. This does not include condensed uncombined water vapor.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code; and 40 CFR Part 61 Section 140, Subpart M.

HISTORY

1. New section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of first paragraph and definition of "Natural barrier" (Register 97, No. 3).
3. Certificate of Compliance as to 8–1–96 order, including amendment to definition of "Asbestos Containing Waste" and amendment of NOTE, transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 17897.15. Schedules of Compliance.

(a) The owner or operator of a solid waste facility that disposes of asbestos containing waste (ACW) in accordance with section 25143.7 of the Health and Safety Code on or after August 1, 1996 and does not possess a solid waste facilities permit shall:

(1) Comply with the security, inspection, manifest system, recordkeeping and reporting requirements specified in this chapter on or before October 30, 1996.

(2) Implement the approved change(s) according to a schedule of compliance established by the Enforcement Agency.

(3) Obtain a solid waste facilities permit on or before November 29, 1997.

(b) The owner or operator of a solid waste facility that disposes of ACW in accordance with section 25143.7 of the Health and Safety Code

on or after August 1, 1996 and has a solid waste facilities permit which regulates the disposal of asbestos containing waste shall:

(1) Comply with the security, inspection, manifest system, record-keeping and reporting requirements specified in this chapter on or before October 30, 1996.

(2) Implement the approved change(s) according to a schedule of compliance established by the Enforcement Agency.

(3) Obtain approval for RDSI amendments on or before November 29, 1997.

(c) The owner or operator of a solid waste facility that disposes of ACW in accordance with section 25143.7 of the Health and Safety Code on or after August 1, 1996 and has a solid waste facilities permit which does not regulate the disposal of asbestos containing waste shall:

(1) Comply with the security, inspection, manifest system, record-keeping and reporting requirements specified in this chapter on or before October 30, 1996.

(2) Implement the approved change(s) according to a schedule of compliance established by the Enforcement Agency.

(3) Obtain a revised solid waste facilities permit on or before November 29, 1997.

(d) The owner or operator of a solid waste facility that has not disposed of ACW in accordance with section 25143.7 of the Health and Safety Code on or before August 1, 1996 and intends to dispose of ACW shall file an application for a permit revision request pursuant to article 3.1, chapter 5 of this division to the Enforcement Agency and comply with the provisions specified in this chapter.

(e) The owner or operator of a new solid waste facility who intends to dispose of ACW in accordance with section 25143.7 of the Health and Safety Code after August 1, 1996 shall file an application for a new permit pursuant to article 3.1, chapter 5 of this division to the Enforcement Agency and comply with the provisions specified in this chapter.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order, including amendment of subsections (a) and (e), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 2. Standards

§ 17897.16. General Standards.

The owner or operator of any solid waste facility that disposes of asbestos containing waste shall ensure that the designated asbestos containing waste disposal area complies with requirements specified in this division. The designated asbestos containing waste disposal area shall be located, designed, constructed, operated and maintained so that it will protect public health, worker safety, and the environment.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New article 2 (sections 17897.16–17897.20) and section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 17897.18. Design and Operating Requirements.

The owner or operator of a solid waste facility that disposes of asbestos containing waste shall:

(a) establish a designated asbestos containing waste disposal area for the disposal of asbestos containing waste as defined in section 17897.10;

(b) establish a site control program with work zones and control points at the designated asbestos containing waste disposal area. At a minimum, work zones should be established for the active face, designated disposal area, handling and support areas;

(c) segregate asbestos containing waste from refuse. At no time shall asbestos containing waste be disposed with refuse;

(d) establish a means to prevent any visible emissions outside the designated asbestos containing waste disposal area during handling and disposal operations;

(e) maintain the integrity of leak–tight containers and/or packaging at all times during the handling and disposal operations;

(f) minimize the release and exposure of asbestos containing waste after placement in the disposal area by not compacting the waste prior to application of cover, at no time shall compaction equipment come into contact with asbestos containing waste containers or packaging;

(g) after deposit, the owner or operator shall cover the asbestos containing waste with sufficient cover material to ensure complete coverage of the disposed asbestos containing waste and prevent re–exposure during continuing disposal operations.

(h) cover shall be applied to the asbestos containing waste at a frequency that minimizes releases to the environment and threats to human health, but at a minimum of once every operational hour. An alternative frequency may be prescribed if the Enforcement Agency deems it appropriate.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order, including amendment of subsection (h), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 17897.19. Additional Requirements.

(a) The owner or operator shall not accept asbestos containing waste without having received an Identification Number as described in section 66260.10, title 22, California Code of Regulations (CCR), following the procedure specified by the Department of Toxic Substances Control.

(b) In addition to any requirements already imposed on landfills by Title 14, Division 7, Chapter 3 (commencing with section 17200) and Chapter 5 (commencing with section 18010), and in lieu of any requirements imposed by Title 8 and Title 22, the owner or operator shall comply with the following requirements:

(1) Provide additional site security to that required in article 7.4 of chapter 3 of this division (commencing with section 17656) to prevent unauthorized entry of persons into the designated asbestos containing waste disposal area. These requirements include:

(A) A surveillance system which continuously monitors and controls entry by the public into the designated asbestos containing waste disposal area or means to control entry into the designated asbestos containing waste disposal area at all times, unless the entire facility meets the above requirements or the facility does not allow public access.

(B) Post warning signs as specified in this section around the designated asbestos containing waste disposal area. These signs must be posted in a manner so that a person can read them. These signs shall be at least 51 cm X 36 cm (20 inch x 14 inch) and state the following information:

DANGER
Asbestos Waste Disposal Site
Do Not Create Dust
Breathing Asbestos Is Hazardous To Your Health

The top line shall be in at least one and three fourths inch (4.4 cm) type. The second line shall be in at least one inch (2.5 cm) type. The third line shall be in at least three fourths inch (1.9 cm) type. The last line shall be in at least 48 point type. All four lines shall be in Sans Serif, Gothic or Block type. The line spacing shall be equal or greater to the height of the upper line. The legend shall be written in English, Spanish and in any other language predominant in the area surrounding the solid waste facility.

(2) In addition to disposal site records specified in article 7.3 of chapter 3 of this division (commencing with section 17636), maintain the additional information required by article 5, chapter 15, division 4.5, title 22, CCR as it relates to hazardous waste manifests and recordkeeping.

(A) The solid waste facility shall comply with the requirements of chapter 18, division 4.5, title 22, CCR as they apply to the notification/certification/treatment of asbestos containing waste prior to land disposal. At a minimum, the solid waste facility should ensure that the asbestos containing waste is adequately wet or treated so that it meets this standard prior to disposal.

(B) The solid waste facility shall maintain an operating record as part of the disposal site record. This operating record shall include the following information: the quantity and date of each shipment of asbestos containing waste received, the disposal location(s) of each shipment of asbestos containing waste, a summary report of all incidents which require implementation of the contingency plan, results of inspection required by section 17897.20, and training records as specified in subsection (c)(2)(B) of this section. The operating record shall be maintained until closure of the facility.

(3) Meet the requirements for financial responsibility for liability claims and closure and post closure as specified in articles 3.3 and 3.5 of chapter 5 of this division.

(c) The owner or operator shall at a minimum comply with the following additional requirements:

(1) The solid waste facility shall prepare a contingency plan. The contingency plan shall be designed to minimize the hazard to human health or the environment from unplanned sudden or non–sudden release of asbestos containing waste to the air, soil or water. The provisions of this plan shall be carried out immediately when a release could threaten human health or the environment.

(A) The contingency plan shall describe the actions facility personnel shall take in response to a release of asbestos containing waste. The plan shall describe arrangements agreed to by local emergency response agencies. The plan shall list names, addresses and telephone numbers of all persons qualified to act as emergency coordinators. This list shall be kept up to date. The plan shall list all emergency equipment located at the facility. This list shall be kept up to date. The plan shall include a description of each item on the list and a brief description of its capabilities. The plan shall describe a signal to begin evacuation, identify routes for evacuation, and identify alternate routes.

(B) The contingency plan shall be amended whenever: the regulations change, the plan fails, the facility changes in operation, the list of emergency coordinators changes, or the list of emergency equipment changes.

(C) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Enforcement Agency.

(2) Solid waste facility personnel shall complete a program of classroom instruction or on–the–job training that teaches them to perform their duties in a way which ensures the facility's compliance with these requirements.

(A) The training program shall be directed by a person trained in asbestos waste management procedures. At a minimum, the training program shall be designed to ensure that facility personnel are capable of responding effectively to an emergency by familiarizing them with the contingency plan. Personnel shall successfully complete the training described within six months of their assignment to duties which manage asbestos containing waste. Personnel shall also take part in an annual review of the initial training. No personnel shall work unsupervised until they have completed the training described in this section.

(B) The owner or operator shall maintain the following documents and records at the facility: a job title for each job related to asbestos containing waste management and the name of each person filling that job; a written description of that job title; a written description of the type and amount of training required for that job title; and records documenting that the training had been given.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order, including amendment of subsections (b)(1) and (b)(2), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 17897.20. Inspection Requirements.

The owner or operator of a solid waste facility that disposes of asbestos containing waste shall inspect the facility. This inspection shall include but not be limited to the designated asbestos waste containing area for deterioration, operator errors, problems with cover, leakage and discharges that may be causing or may lead to: (1) releases to the environment; or (2) a threat to human health. The owner or operator shall maintain an inspection schedule that identifies the items to be inspected, the frequency of the inspection and identify the types of problems that are to be looked for during the inspection. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment but at a minimum of once each operating day. The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Remedial action must be taken immediately where a hazard is imminent or has already occurred. The owner or operator shall maintain a record of these inspections. Notwithstanding section 17897.19(b)(2)(B), the reports resulting from these inspections need only be kept for three years from the date of the inspection.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 3. Excavation Requirements

§ 17897.21. Excavation Requirements.

(a) The owner or operator of any solid waste facility that disposes of asbestos containing waste shall ensure that the excavation or disturbance of buried asbestos containing waste will not pose a danger to the public, employees, and environment.

(b) Except as specified in subsection (g) of this section, an excavation management plan shall be prepared and submitted to the Enforcement Agency for review and approval at least 45 days prior to excavating or otherwise disturbing any asbestos containing waste that has been buried at the disposal area. The excavation management plan shall include the following information:

(1) Schedule starting and completion dates.

(2) Map showing the location of the area where buried asbestos containing waste is to be excavated or disturbed, locations of on–site structures, and environmental monitoring collection and control systems.

(3) Response for disturbing the waste.

(4) A health and safety plan identifying the health and safety issues regarding the proposed excavation and measures to be taken to protect public health, worker safety, and the environment. The plan shall be developed and prepared by an industrial hygienist certified by the American Board of Industrial Hygiene. This health and safety plan shall include work practices and engineering controls to be used to protect worker health and safety during excavation.

(5) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated waste. The Enforcement Agency shall consult with the appropriate air quality control district or state Air Resources Control Board when evaluating the proposed emissions control procedures.

(6) Location of any temporary storage site and the final disposal site.

(c) The excavation management plan shall be prepared by a professional engineer or engineering geologist registered in California.

(d) If the excavation will begin on a date other than the date specified in the plan, the owner or operator shall notify the Enforcement Agency at least 5 calendar days prior to the rescheduled start date by certified mail. If the completion date is delayed, the owner or operator shall notify the Enforcement Agency of the new completion date at least 2 calendar days before the original scheduled completion date by certified mail.

(e) In evaluating the proposed excavation management plan, the Enforcement Agency will consider:

(1) whether the excavation is necessary to the proposed use of the site, and will not increase the potential hazard to human health or the environment;

(2) whether the excavation is necessary to reduce a threat to human health, employees, and the environment; and

(3) recommendations of the appropriate air quality control district and the regional water quality control board.

(f) No later than 30 calendar days from receipt of the plan, the Enforcement Agency shall respond to the applicant regarding completeness of the plan. If the plan is incomplete, the applicant will be notified which parts of the plan are incomplete and the manner with which the plan can be made complete. If additional review time is needed, the applicant will be notified within 30 days of submittal of the plan.

(g) The 45 day notice is not required if an emergency excavation is performed to prevent or diminish an imminent and substantial endangerment to human health or the environment. If an emergency excavation is required, the owner or operator shall give verbal notice to the Enforcement Agency prior to beginning the excavation activity and submit a written report to the Enforcement Agency within 15 days after the emergency excavation has been completed.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New article 3 (section 17897.21) and section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsections (b)(4) and (d) (Register 97, No. 3).
3. Certificate of Compliance as to 8–1–96 order, including amendment of subsection (b)(5), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 4. Closure and Post Closure

§ 17897.24. General.

The owner or operator shall comply with all applicable closure and post closure requirements as specified in article 7.8, chapter 3 and article 3.4, chapter 5 of this division.

NOTE: Authority cited: Section 44820, Public Resources Code. Reference: Section 25143.7, Health and Safety Code.

HISTORY

1. New article 4 (section 17897.24) and section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 5. LEA Standards and Authorization

§ 17897.25. Authorized ACW Program.

Local Enforcement Agencies (LEA) shall meet the following requirements before being authorized to enforce this chapter.

(a) At a minimum, the LEA shall:

(1) meet the certification requirements as described in Article 2.1 of chapter 5 of this division.

(2) have provided field staff with training in compliance with Title 8 CCR, including but not limited to recognition of asbestos, respiratory protection, and selection and use of personal protective equipment. The LEA shall amend their Injury, Illness and Prevention Plan to comply with this requirement.

(3) submit an Enforcement Program Plan (EPP) amendment which addresses those elements modified by this authorization.

(4) have field staff trained in environmental sampling methodology and practice. The training shall include knowledge of sampling technique, field quality assurance/control, sample custody, sample collection and documentation.

(5) provide field staff with equipment necessary to comply with these requirement including but not limited to personal protective equipment and sample collection equipment.

(b) The LEA shall make an application for authorization to the Deputy Director of the Permitting and Enforcement Division of the California Integrated Waste Management Board by cover letter with documentation establishing that the requirements of subsection (a) have been met.

(c) The Board may make a provisional authorization to an LEA that meets the requirements of subsection (a)(1) and (2) of this section. A provisional authorization may authorize the LEA to implement specific provisions of this chapter. The Board may grant full authorization upon complete compliance with the provisions of this section.

(d) In jurisdictions where the Board does not authorize a local program, the Board will be the enforcement agency for ACW.

NOTE: Authority cited: Sections 43200 and 44820, Public Resources Code. Reference: Title 14, CCR, Division 7, Article 2.1, Chapter 5; and Title 8, CCR section 5192.

HISTORY

1. New article 5 (section 17897.25) and section filed 8–1–96 as an emergency; operative 8–1–96 (Register 96, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–29–96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–1–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Chapter 4. Resource Conservation Programs

Article 1. Recycling Market Development Zone Designation Process

§ 17900. Introduction.

For the purposes of this Article, both the question and answer in each section have regulatory effect for implementation and enforcement. In addition to the regulations in this Article, statutory provisions contained in Sections 42010 through 42023 of the Public Resources Code govern Recycling Market Development Zones. Sections 17914 and 17914.5 of this Article relate to Recycling Market Development Zone redesignation requests received at any time following conditional or final designation.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42013 and 42014, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).

2. Change without regulatory effect amending section and NOTE filed 7-8-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of section and NOTE filed 7-10-95; operative 8-9-95 (Register 95, No. 28).

§ 17901. Definitions.

In addition to the definitions contained in Public Resources Code Sections 40100–40201 and 42002, the following definitions apply to the regulations contained in this Article.

(a) "Board" means the California Integrated Waste Management Board.

(b) "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream or which are separated at a centralized facility. "Compost" includes vegetable, yard, and wood wastes which are not hazardous wastes.

(c) "Designation cycle" means the time it takes to complete all the steps that the Board and applicants take to establish Recycling Market Development Zones. The steps include requesting applications, preparing and submitting applications, evaluation applications, selecting zones, and making final designations as Recycling Market Development Zones.

(d) "Final designation" means an applicant has received written notification from the Board stating it has satisfactorily completed all the requirements for designation as a Recycling Market Development Zone.

(e) "May" means a provision is permissive.

(f) "Must" means a provision is mandatory.

(g) "Proposed Zone" means the geographic area identified in a Recycling Market Development Zone application for designation as a Recycling Market Development Zone.

(h) "Recycling Market Development Zone application" means the written application submitted to the Board, the contents of which are specified in section 17905 of this chapter.

(i) "Recycling Market Development Zone" or "Zone" is a geographic area as defined by Public Resources Code Section 42002(c).

(j) "Redesignation" means Board approval of an application as defined in section 17914, which describes proposed changes to a currently designated Recycling Market Development Zone. The proposed changes may include, but are not limited to, expansion of an existing Zone's boundaries, reduction of a Zone's boundaries, renewal of Zone designation, and change in boundaries of a Zone.

(k) "Zone administrator" means the person selected by the applicant to administer the activities of the Zone and report upon its activities to the Board.

(*l*) "Expansion" means the addition of a jurisdiction or jurisdictions to an existing Zone's boundaries.

(m) "Reduction" means the deletion of jurisdiction or jurisdictions from an existing Zone's boundaries.

(n) "Change in boundaries of a Zone" means the addition or reduction of land that does not involve the addition or deletion of a jurisdiction or jurisdictions.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 40050, 42002, 42010, 42014, 42019, 42020 and 42022, Public Resources Code.

HISTORY

1. New section filed 9-9-91; operative 10-9-91 (Register 92, No. 13).
2. New subsection (j) and subsection redesignation filed 3-7-94; operative 3-7-94 (Register 94, No. 10).
3. Change without regulatory effect amending opening paragraph, subsection (i) and NOTE filed 7-8-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
4. Amendment of subsection (j) and new subsections (*l*)-(n) filed 9-7-2004; operative 10-7-2004 (Register 2004, No. 37).

§ 17902. How does a Recycling Market Development Zone designation cycle start?

(a) By March 31 of each year, if and when the Board determines a need for additional zones, it will evaluate the maximum number of new Recycling Market Development Zones to be designated and initiate a new cycle. The Board will identify the statewide recycling market development objectives for the designation cycle. These are described in Section 17909.

(b) Within 120 calendar days of the action taken in (a) above, the Board will mail a notice to all who have made a written request to receive notification, announcing the date when a Recycling Market Development Zone designation cycle will begin. The notice will state the number of the Zones the Board will designate during the designation cycle and will list the statewide recycling market development objectives and their priority of importance.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42013–42014, Public Resources Code.

HISTORY

1. New section filed 9-9-91; operative 10-9-91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7-8-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 9-7-2004; operative 10-7-2004 (Register 2004, No. 37).

§ 17903. What is the deadline for getting my application to the Board?

You must submit an original and four copies of your application to the Board by 4:00 p.m. on the one hundred twentieth (120) day after the commencement date of a designation cycle.

HISTORY

1. New section filed 9-9-91; operative 10-9-91 (Register 92, No. 13).

§ 17904. What if the Board receives my application after the deadline?

Your application will not be reviewed. The Board will notify you in writing within a minimum of seven days and a maximum of 30 days of the date it received your application to tell you that your application will not be reviewed because it was late. The median timeframe for notification is 21 days.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Section 42013, Public Resources Code.

HISTORY

1. New section filed 9-9-91; operative 10-9-91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7-8-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17905. What do I need to include in my Zone application?

Your Zone application must include all the items listed in (a) through (g), below. When the Board reviews your application, it will consider only the information in your application.

(a) The name(s) and address(es) of the applicant or applicants, and

(b) The name, address, and phone number of the Proposed Zone's administrator, and

(c) The location of the Proposed Zone, as follows:

(1) A narrative description of the Proposed Zone's boundaries and location within the State of California, and

(2) On a street map, clearly identify the streets that mark the boundaries of the Proposed Zone, and

(3) A copy of the existing general zoning and land use maps for the Proposed Zone's area and the area immediately surrounding it. Clearly identify the boundaries of the Zone on this map, and

(d) Letters of support and commitment from all cities, counties, agencies, organizations, financial institutions, and businesses, including all suppliers of recovered materials, which you have identified in the application as having a role in the Proposed Zone, and

(e) A copy of the resolution or ordinance, from each governing body having jurisdiction over any portion of a Proposed Zone, that makes the findings required by Section 42010(b) of the Public Resources Code, and

(f) A detailed recycling market development plan, as described in Section 17907, and

(g) A statement describing how you intend to satisfy the California Environmental Quality Act or demonstration of California Environmental Quality Act compliance.

(h) A statement demonstrating the Zone's commitment to environmental justice and to protecting the environment and public health and safety in a manner that does not unfairly affect any low–income and minority populations.

NOTE: Authority cited: Sections 40502, 42013 and 71110, Public Resources Code. Reference: Sections 42010(b), 42015 and 71110(a), Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending subsection (e) and NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of subsection (g), new subsection (h) and amendment of NOTE filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17906. What will the Board consider when reviewing my application?

When the Board reviews you application, it will consider only the information in your application.

(a) First, the Board will review applications to determine that they are complete and meet the eligibility requirements that are described in section 42002(c) of the Public Resources Code. Within 21 calendar days of receiving an application, the Board will send an Initial Review Letter to the applicant, stating that the Board has received their application. The Board's minimum timeframe for completing an Initial Review is seven days. The median timeframe is 14 days. The maximum time frame is 21 days. The Initial Review Letter will specify any deficiencies regarding completeness or eligibility and grant the applicant 14 calendar days from the date on the letter to correct the deficiencies and submit the changes to the Board. The Board must receive the changes by 4:00 p.m. on the 14th day.

(1) Within the 21 day initial review period an applicant can make administrative changes such as changing the name of the contact person, submitting missing pages or correcting calculation or typographical errors. An applicant cannot make changes to the recycling market development plan or change the size of the proposed zone during this time.

(2) If more than one application includes the same area, or portion of an area, the Board will notify the applicants, in writing, within the 21 day Initial Review period. The applicants must resubmit their applications without overlapping areas within 30 calendar days of the date on the notification letter. The Board must receive your modified application by 4:00 p.m. on the 30th day.

(b) The Board will evaluate your application's recycling market development plan and, if it is accepted, will review it against the statewide recycling objectives.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Section 42020, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending subsection (a) and NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17907. What information must be included in my recycling market development plan?

The plan shall include, but is not limited to, the following information:

(a) An analysis of how the Zone will be supplied with the necessary feedstock to support the number and types of businesses planned for development within the Zone.

(b) A marketing plan that describes how the Zone will attract new, and expand existing, businesses.

(c) A description of the funding and organizational structure of the Zone.

(d) A description of the incentives the local governments plan to offer to businesses in the Zone.

(e) A description of the financial support that will be available to businesses in the Zone.

(f) An analysis as to whether the available or planned public works system will be able to support the Zone.

(g) A description of the real property and buildings available in the Zone for market development purposes.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42012, 42014 and 42015, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17908. What happens if my recycling market development plan is accepted?

The Board will review your plan to see if it demonstrates that it is well–developed enough to succeed. If the Board accepts your plan, it qualifies for evaluation in relation to the statewide recycling market development objectives listed in section 17909 of this Article. The Board will select those plans which best support these objectives.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42015 and 42020, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17909. What are statewide recycling market development objectives?

Statewide recycling market development objectives focus on State of California recycled materials market development policy and needs and are defined by the Board prior to the commencement of each designation cycle. The relative importance of these objectives may change from one designation cycle to another to reflect the current recycled materials market. The relative importance of each objective will be stated at the beginning of a designation cycle in the Board's notice of commencement of each designation cycle. Statewide objectives include, but are not limited to:

(a) To extend the landfill capacity available to the applicant's jurisdiction and region.

(b) To encourage advance in recycling technology.

(c) To distribute zones to encourage statewide recycling.

(d) To stimulate the development of markets for recycled materials.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42015 and 42019, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17910. What happens if the Board designates my area as a Zone?

(a) The Board will send you a letter, hereafter referred to as "Notification," within a minimum of 90 and a maximum of 120 calendar days of the application deadline and tell you whether or not you were selected as a Recycling Market Development Zone. The medial timeframe for sending you notification is 110 calendar days. If the Board designates your area as a Zone, the Notification may state that the designation is conditional and specify certain conditions that you must satisfy in order to receive final designation from the Board.

(b) Actions you must complete within 90 calendar days prior to receiving final designation may include, but are not limited to, the following:

(1) You must submit copies of all finalized multi–jurisdictional agreements.

(2) You must demonstrate compliance with the California Environmental Quality Act.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42014 and 42015, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

3. Amendment filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17911. I have completed all conditions listed in my Notification. When can I get final designation?

(a) After you satisfy all the conditions in your Notification, you must apply in writing for final designation. The Board must receive your request for final designation within 120 calendar days from the date of the Notification. Your request for final designation must document that you meet the conditions that were specified in your Notification. The Board will make its determination within a minimum of 45 calendar days and a maximum of 90 calendar days of receipt of your request for final designation. The median timeframe is 75 calendar days.

(b) If you do not satisfy all the conditions of your Notification within the 120 calendar day time period, you will forfeit your designation status.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Sections 42014 and 42015, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17912. When does my final designation become effective?

Your final designation becomes effective on the date the Board awards final designation. At that time, you become eligible to receive low–interest loans pursuant to section 42145, Public Resources Code.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Section 42014, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17913. Do I have to submit regular reports?

Yes. By March 31 of each year, you must submit a report to the Board. At a minimum, the report must include the following:

(a) The names and addresses of the recycling businesses in the Zone, and

(b) The types and amounts of postconsumer or secondary waste materials used as feedstock by recycling businesses in the Zone.

(c) Any marketing efforts undertaken and the outcomes of these efforts.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Section 40507, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17913.5. Can a Zone Terminate Its Zone Designation?

Yes, a Zone can terminate its Zone designation. A zone that wishes to terminate its Zone designation, must submit the following:

(a) A letter from the Zone Administrator requesting termination of Zone designation.

(b) Copies of resolutions or ordinances from each affected jurisdiction within the zone boundaries requesting termination of Zone designation.

Within 14 calendar days of receiving the above documents, Board staff will review the documents to make sure that the requirements in sections (a) and (b) above have been met. Upon determination that the requirements have been met, a letter will be sent to the Zone Administrator informing that Zone related services by the Board will cease and the Zone designation has been terminated.

NOTE: Authority cited: Sections 40502 and 42023, Public Resources Code. Reference: Sections 42013 and 42014, Public Resources Code.

HISTORY

1. New section filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17914. Can a Zone be redesignated?

Yes, the Board may redesignate a Zone. The Zone Administrator must submit an application to the Board describing proposed changes to the existing Zone plan. Changes to an existing Zone plan may include, but are not limited to: a request for renewal of a current Zone designation; any request for approval of an expansion or reduction or change in boundaries of a Zone. For redesignation applications that seek renewal of a current Zone designation, a completed application must be submitted to the Board at least 60 calendar days prior to the Zone's expiration date. Each application for redesignation must include, but is not limited to, the following:

(a) The name(s) and address(es) of the redesignation applicant or applicants and the Zone Administrator.

(b) A statement of the purpose for submitting the redesignation application, selected from the following categories:

(1) renewal of designation, or

(2) zone expansion, or

(3) reduction or

(4) change in boundaries.

(c) Documents depicting the location of the proposed redesignation area, as follows:

(1) A description of the redesignation area's boundaries and location within the State of California,

(2) A street map identifying the streets that mark the boundaries of the redesignation area on a street map, and

(3) For redesignation categories (1), (2), (3) and (4) listed in section (b) above, copies of the existing general zoning and land use maps for the proposed redesignation area and the area immediately surrounding it. Clear identification of the boundaries of the proposed changes to the Zone should be on the maps;

(d) For redesignation categories (1), and (2), listed in section (b) above, a copy of the Notice of Determination which has been filed with the State Clearinghouse in the Office of Planning and Research as evidence of compliance with the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) as it applies to the proposed changes in the Zone.

(1) Copies of any multi–jurisdictional agreements that pertain to the administration of an existing Zone.

(2) A statement demonstrating the Zone's commitment to environmental justice and to protecting the environment and public health and safety in a manner that does not unfairly affect any low–income and minority populations.

(e) For a redesignation application submitted to obtain renewal of a designation.

(1) A discussion of why redesignation is sought

(2) A copy of the resolution or ordinance from each governing body having jurisdiction over areas included in the Zone boundaries that makes the findings required by Section 42010(b) of the Public Resources Code;

(3) Copies of any multi–jurisdictional agreements that pertain to the administration of the existing Zone.

(4) An updated Market Development Plan that meets the requirements in CCR Section 17907(a)–(g).

(f) For a redesignation application that will result in expansion of a Zone:

(1) A statement of justification concerning why the expansion is necessary, how it will complement the existing Zone, and how this proposed expansion will create additional markets for recyclable materials;

(2) Copies of resolutions from each governing body having jurisdiction over any portion of the current Zone for which redesignation is being requested that supports the proposed expansion;

(3) Copies of resolutions or ordinances from each governing body having jurisdiction over areas not currently included in the Zone boundary that makes the findings required by Section 42010(b) of the Public Resources Code; and

(4) A Supplemental Recycling Market Development Plan which shall include, but is not limited to, the following:

(A) An analysis of how the new area of the Zone will be supplied with the necessary feedstock to support the number and types of businesses planned for development within the Zone.

(B) A marketing plan that describes how the new area of the Zone will attract new businesses, and expand existing businesses.

(C) A description of how the new area of the Zone will be funded and fit into the organizational structure of the current Zone, and an organizational chart of the proposed Zone.

(D) A description of the incentives the local governments plan to offer to businesses in the new area of the Zone.

(E) A description of the financial support that will be available to businesses in the new area of the Zone.

(F) An analysis of the available or planned public works systems that will be available to support the new area of the Zone.

(G) A description of the real property and buildings available in the new area of the Zone for market development purposes.

(5) Letters of commitment and support for the new Zone area, from jurisdiction entities having a role to play in implementing the expanded Zone's Market Development Plan.

(g) For redesignation applications submitted that will result in reduction in the area of a Zone, a description of the proposed change in the Zone boundaries and a copy of the resolution or ordinance from each governing body having jurisdiction over the area of the reduction.

(h) For redesignation applications submitted that will result in change in boundaries of a zone,

(1) A description of the proposed change in the Zone boundaries

(2) Copy of the resolution or ordinance from the jurisdiction having governing authority on the proposed change in boundaries.

(3) A statement describing how you intend to satisfy the California Environmental Quality Act or demonstration of California Environmental Quality Act compliance.

(4) A statement demonstrating the Zone's commitment to environmental justice and to protecting the environment and public health and safety in a manner that does not unfairly affect any low–income and minority populations.

NOTE: Authority cited: Sections 40502, 42013, 42014 and 71110, Public Resources Code. Reference: Sections 42010, 42012, 42014, 42015, 42016 and 71110(a), Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 3–7–94 (Register 94, No. 10).
2. Amendment of first paragraph and subsection (a), repealer and new subsections (b)–(f), new subsections (g)–(h), and amendment of NOTE filed 7–10–95; operative 8–9–95 (Register 95, No. 28).
3. Amendment of section and NOTE filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17914.5. What is the Board's process for reviewing Zone redesignation applications and redesignating Zones?

(a) Upon receipt of your application for redesignation, the Board will review the application to determine that it is complete. Within 21 calendar days of receiving an application for redesignation, the Board will send an Initial Review Letter to the applicant, stating that the Board has received the application.

The minimum time frame for completing the Initial Review is seven calendar days. The median time frame is 14 calendar days. The maximum time frame is 21 calendar days.

The Initial Review Letter will notify each applicant of the date that the application was received, and whether the application is complete or incomplete. If the application is incomplete, the Initial Review Letter will specify any deficiencies regarding completeness or eligibility and grant the applicant 14 calendar days from the date of the letter to correct the deficiencies and submit the changes to the Board.

The Board must receive the noted changes by 4:00 p.m. on the 14th day from the date the letter is sent. Within ten calendar days of receiving the additional information requested by staff in the Initial Review Letter, the Board will notify each applicant whether the application is complete or incomplete.

(1) At any time within the 21 day Initial Review period, and prior to receiving the Board's Initial Review Letter, an applicant can make minor administrative changes such as changing the name of a contact person, submitting missing pages or correcting minor errors.

(b) The Board will conduct a Technical Review of the application, to evaluate the Market Development Plan for its technical adequacy and its ability to succeed. The Technical Review will begin no later than 14 calendar days after the Board's receipt of a complete application for Redesignation. The minimum time frame for completing the Technical Review is seven calendar days. The median time frame is 14 calendar days. The maximum time frame is 21 calendar days.

Following the Technical Review, a letter will be sent to the applicant specifying any technical deficiencies in the application. The applicant shall have 14 calendar days to correct the noted deficiencies and submit changes to the Board. The Board must receive changes by 4:00 p.m. on the 14th day from the date the letter is sent.

(1) Within the 21 day Technical Review period, and prior to receiving the Board's Technical Review Letter, an applicant may correct technical deficiencies as identified in the technical review of the application such as additional analysis regarding targeted feedstock for market development purposes, development of matching local incentives and sources of funding, property and infrastructure availability, inclusion of clearly stated goals and objectives, specific strategy for business attraction and retention efforts, specific strategy for advertising and promotion of the Zone, and administration and funding sources.

(c) Upon receipt of corrections of technical deficiencies identified in the technical review by staff, the Board will either grant or deny the request for redesignation. The redesignation will take effect upon the Board's formal approval.

The Board will send a "Notification" letter to the applicant informing it of its decision, within 14 calendar days of its decision. If an applicant is denied redesignation it may reapply.

(1) If the Board grants conditional redesignation of a Zone, the Notification letter will specify conditions of approval that must be satisfied prior to final redesignation. The applicant will have 120 calendar days from the date of the Notification letter to satisfy the conditions of redesignation.

The Board must receive a written request from the Zone applicant for final redesignation. If conditions of redesignation are not satisfied within the 120 calendar day period, redesignation status will not be approved. The applicant may reapply for redesignation

NOTE: Authority cited: Sections 40502, 42013 and 42014, Public Resources Code. Reference: Sections 42014, 42015 and 42020, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 3–7–94 (Register 94, No. 10).
2. Amendment of section heading and NOTE filed 7–10–95; operative 8–9–95 (Register 95, No. 28).
3. Amendment of subsections (a), (b) and (c)(1) filed 9–7–2004; operative 10–7–2004 (Register 2004, No. 37).

§ 17915. Do composting industries qualify for the incentives offered in a Recycling Market Development Zone?

Yes.

NOTE: Authority cited: Sections 40502 and 42013, Public Resources Code. Reference: Section 42013, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 13).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

§ 17916. Resource Recovery Facility (Site).

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17917. Solid Wastes or Wastes.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17918. Solid Waste Management.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17919. Transfer Station.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17920. Waste Processing Facility (Site).

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17921. Environmental Impact Report Notice of Completion.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100 title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17925. Purpose.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17926. Filing of Notice of Intent.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17927. Facility Location and Information.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17928. Land Use Approval.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

[The next page is 767.]

§ 17929. Justification of Need.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 1.1. Recycling Market Development Revolving Loan Program

§ 17930. Purpose of the Recycling Market Development Revolving Loan Program.

The Recycling Market Development Revolving Loan Program (Program) provides an alternative source of financing for recycling–based businesses, non–profit organizations, and public entities to increase the diversion of non–hazardous solid waste from California landfills and to promote market demand for secondary and postconsumer materials. It assists the Board and local agencies comply with Public Resources Code Sections 40051 and 41780, respectively, and helps local Recycling Market Development Zones (RMDZs) meet the market development goals identified in their recycling market development plans, required by Section 17907 of this Chapter, by fostering recycling–based business development within the RMDZs.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42010 and 42023.1, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48). For prior history, see Register 91, No. 14.
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of article heading, section heading and section filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment of section and NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17931. Definitions.

(a) "Applicant" means an entity that is applying for a Loan.

(b) "Application" means the information an Applicant must provide to the Board when seeking a loan.

(c) "Board Loan Committee" or "Loan Committee" means the committee referred to and established in Section 17935.5 of this Chapter.

(d) "Borrower" means an Applicant whose application has been approved and who has executed a Loan Agreement.

(e) "Board" means California Integrated Waste Management Board.

(f) "CEQA" is the California Environmental Quality Act found in Public Resources Code Sections 21000, et seq.

(g) "Capital Improvements" means physical improvements to publicly owned land, including buildings, structures and fixtures or attachments of a permanent or semi–permanent nature, including large equipment, erected on and affixed to the land.

(h) "Designation" means a Zone Applicant has received written notification from the Board stating it has satisfactorily completed all the requirements for designation as a Recycling Market Development Zone.

(i) "Infrastructure" means the basic facilities, such as sewer, water, transportation, and utility systems.

(j) "Loan" means a loan from the Recycling Market Development Revolving Loan Subaccount or the California Tire Recycling Management Fund.

(k) "Loan Agreement" means a written agreement between a Borrower and the Board for a Loan made in accordance with this Article.

(*l*) "May" means a provision is permissive.

(m) "Must" means a provision is mandatory.

(n) "Onerous Debt" means debt with high interest rates and/or short terms that causes a negative impact on the Borrower's cash flow and jeopardizes the Borrower's ability to convert to or expand its diversion of recycled or secondary material.

(o) "Phase I Assessment" means an assessment to be completed by a specialized engineering or consulting firm that provides a professional opinion, based on obvious evidence, as to the past and potential usage, storage, handling, or disposal of materials within the property that have been or may be toxic or hazardous, or may cause violations of state and/or federal laws, rules, or regulations pertaining to soil and water quality; and to identify past and potential off–site contaminant sources that did have, or may have an adverse environmental impact on the property. The assessment may be performed at the time of loan application or at any time during the life of the loan, as determined necessary by the Board. Hazardous materials and wastes that are to be identified include those meeting the definitions of Public Resources Code Section 40141 and Health and Safety Code Sections 25117 and 25501(k).

(p) "Postconsumer waste material" is defined in Public Resources Code Section 42002(b).

(q) "Project" means the activity for which a loan is requested.

(r) "Recycling Market Development Zone" or "Zone" is a geographic area as defined by Public Resources Code Section 42002(d).

(s) "Reuse" means to take a product, rather than a material, which has served its useful life or is factory defective, and provide some new value to the product, by reconditioning, reprocessing, or some other process which makes the product usable again for its original intended purpose.

(t) "Secondary waste material" is defined in Public Resources Code Section 42002(f).

(u) "Source reduction" is defined in Public Resources Code Section 40196.

(v) "Value added product" means an item which has increased in value or changed its character or composition through a manufacturing or reuse process. Collecting, sorting and/or baling of recycled or recovered materials for convenience or ease of transportation does not constitute adding value.

(w) "Zone administrator" is defined in Section 17901(j) of this Chapter.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42023.1 and 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48). For prior history, see Register 91, No. 14.
2. Change without regulatory effect amending subsections (r)–(t) and NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of subsections (c), (s) and (t) and amendment of NOTE filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
5. Amendment of subsection (a), repealer of subsection (h), subsection relettering and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17932. Eligible Applicants.

An eligible applicant is one whose project is located within the boundaries of the Recycling Market Development Zone. In the case of mobile operations, the primary business location for the project must be located within the boundaries of the Recycling Market Development Zone. Eligible applicants include:

(a) Businesses and not–for–profit organizations who:

(1) Practice, or propose to practice, appropriate source reduction; or

(2) Use or propose to use postconsumer or secondary waste materials to produce a value added product.

(b) Local governments or agencies who seek to provide infrastructure and/or capital improvements in support of organizations referred to Subsection (a) of this section.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.1, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48). For prior history, see Register 91, No. 14.
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).

3. Amendment of section and NOTE filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
5. Amendment of first paragraph and NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17932.1. Tire Recycling Projects.

Loans made with funds from the California Tire Recycling Management Fund may be carried out in accordance with the process and/or eligibility criteria set forth in this Article and Public Resources Code Sections 42872–42875.

NOTE: Authority cited: Sections 40502 and 42881, Public Resources Code. Reference: Sections 42872, 42873 and 42874, Public Resources Code.

HISTORY

1. New section filed 6–14–93; operative 6–14–93 (Register 93, No. 25).
2. Repealer and new section filed 4–8–98; operative 5–8–98 (Register 98, No. 15).

§ 17933. Priority Projects.

Priority consideration shall be given to those projects that meet the following criteria:

(a) Demonstrate an ability to repay the loan;

(b) Increase market demand for the secondary or postconsumer waste material used in the project;

(c) Satisfy additional statewide recycling market development objectives as described in Section 17909 of this Chapter; and

(d) Satisfy additional priorities that are determined by the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.1, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending subsection (1) and NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Amendment of section and NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17934. Loan Amounts.

The maximum loan amount is three–fourths (3/4) of the cost of each project, not to exceed two million dollars ($2,000,000).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4(a)(4), Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Change without regulatory effect amending section filed 4–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).
5. Repealer and new section and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17934.1. Uses of Funds.

(a) For eligible businesses and not–for–profit organization applicants, loan funds may be used for:

(1) equipment purchases,

(2) real property purchases,

(3) working capital, or

(4) refinancing of onerous debt.

(b) For eligible local governments or agencies, loan funds shall be used only for publicly owned infrastructure and capital improvements located within the Zone which directly support recycling based business activities that would be eligible for a Loan.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.1, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of subsections (a) and (b) filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17934.3. Fees.

A non–refundable application fee of $300.00 shall accompany each loan application. A loan fee of 3 percent shall be charged upon loan closing. The Board reserves the right to periodically adjust the application and loan origination fees. The application fee and loan fee are considered part of the project cost and may be financed.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.1, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Amendment filed 6–14–93; operative 6–14–93 (Register 93, No. 25).
3. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
4. Amendment of section and NOTE filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
5. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17934.5. Interest Rate.

(a) The interest rate for loans is determined by the Board and is based on, but may vary from, the Surplus Money Investment Fund (SMIF) rate. The Board, as it deems appropriate, may adjust the interest rate semiannually, after the SMIF rate is announced by the Controller's Office in January and July of each year. The Board shall keep the interest rate as low as possible, consistent with current market conditions and the long–term sustainability of the Recycling Market Development Revolving Loan Program.

(b) The interest rate for loans funded through leveraging programs pursuant to Article 1.2 will be negotiated between the Board, the leveraging entity, and if applicable the lender.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
2. Amendment of section and NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935. Application Process.

(a) Applicants may submit their pre–applications and applications to the Board at any time throughout the year.

(b) Applicants shall not submit applications for approval by the Board unless a Zone has received designation or redesignation status, as defined in Section 17901(d) of this Chapter.

(c) The applicant may submit a pre–application, as determined by the Board, to obtain a rapid evaluation of applicant's or a project's eligibility, prior to submitting a full application.

(d) The Applicant must submit an application with original signatures to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48). For prior history, see Register 91, No. 14.
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment of section and NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.1. Application Content.

(a) All Applicants must apply in writing for a loan. The Board may make a loan application form available to assist applicants in applying for a loan. A complete application may consist of a written request containing the following items:

(1) Characteristics of the business shall include the applicant legal name, physical address, mailing address, contact person's name and phone number, copy of business organizational documents, copies of business licenses and permits, business plan, key ownership and management resumes, list of all owners with percentage owned and titles, authorizations to obtain credit reports, a Recycling Market Development Zone Administrator's acknowledgement of the project; payment of a loan application fee, and certification of compliance with applicable laws and regulations to properly conduct and operate the business in California.

(2) Demonstration of ability to repay shall include the business historical and projected financial statements and income tax returns; key management and ownership personal financial statements and income tax returns; schedules of debts; facility lease agreement or copy of deed of trust on the project site; sources and uses of all project costs. The financial projections shall include a list of assumptions under which they were prepared that are reasonable and can be substantiated. The applicant may need to provide a feasibility study and cost break even analysis accounting for the fixed and variable costs to produce a product including the sales price of the product and the quantity of units that must be produced and sold to achieve a break even and profitable cash flow.

(3) Demonstration of the ability to collateralize the loan shall include a detailed list of assets that will secure the loan with documentation supporting the asset value such as appraisals, purchase orders, invoices, cancelled checks, or similar documents; and ownership verification such as deeds of trust, Uniform Commercial Code financing statements, Ownership Certificates. The Board reserves the right to discount the asset value based on age and remaining expected useful life.

(4) The applicant shall provide documentation to substantiate a matching funds requirement of twenty–five percent or more investment into the project. This shall be achieved by providing purchase orders, invoices, cancelled checks, supplemental financing commitment letters or promissory notes, executed investor agreements with evidence of transfer of funds, or other similar documents.

(5) Description of the project to be financed including the feedstock source, type, quantity and availability, the manufacturing process, end product specifications and marketability, current and projected tonnage of materials to be diverted from California landfills, public environmental reports and indemnification to discern the possible risks which may arise from hazardous waste or materials related to the project or previous operations at the site.

Additional information required from businesses and not–for–profit organizations is described in subsection (b) below. Local government or agency applicants must also provide the information requested in subsections (b) and (c) below.

(b) Applicant shall provide any further information or documentation deemed necessary by the Board to determine the creditworthiness of the Applicant, or the Applicant's ability to secure and repay the loan.

(c) Applications from local governments or agencies must contain the following additional information:

(1) A description of the local government's or agency's activities and responsibilities;

(2) The local government's or agency's annual financial operating statements for the previous three years;

(3) A governing board resolution granting authority to make application to the Board for a loan commitment.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of section and NOTE filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Amendment of subsection (a), new subsections (a)(1)–(a)(5) and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.2. Loan Agreement.

Each Loan Agreement shall include, but not be limited to, the following terms and conditions:

(a) The interest rate of the loan as specified in Section 17934.5 of this Article.

(b) The term of the loan shall not exceed 10 years when collateralized by assets other than real estate, or not more than 15 years when partially or wholly collateralized by real estate.

(c) A description of the security and conditions.

(d) Timeframes for complying with the conditions of loan closing and any special conditions that must be satisfied prior to, or covenants which must be complied with after, the disbursement of funds.

(e) Identification of what is considered an event of default, including a provision that, upon failure to comply with the loan agreement, or if any information provided by the Applicant is found to be untrue, any remaining unpaid amount of the loan, with accrued interest, will be immediately due and payable, upon determination by the Board.

(f) A provision that the Borrower agrees to waive any claims against and to indemnify and hold harmless the State of California, including the California Integrated Waste Management Board, from and against any and all claims, costs, and expenses stemming from operation, maintenance, or environmental degradation at the site.

(g) Proof of adequate insurance for the business, naming the Board as loss payee, and when appropriate, naming the Board as additional insured, up to the amount of the loan.

(h) Submission of borrower's and guarantor's financial statements and tax returns, diversion reports, business insurance, and worker's compensation insurance, upon request by the Board.

(i) Any other provision needed to properly analyze and document a loan deemed necessary by the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of subsections (a)–(e) and (g) filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Change without regulatory effect amending subsection (b) filed 4–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).
5. New subsection (h), subsection relettering, amendment of newly designated subsection (i) and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.3. Process for Preliminary Review.

Upon receipt, Board staff shall review each application to determine whether the Applicant and/or Applicant's project is eligible for a loan, pursuant to Section 17932 of this Article, and whether the application is complete, pursuant to Section 17935.1 of this Article. Within 10 working days of receiving the application, the Board staff shall do one of the following:

(a) Send a letter to the Applicant indicating that the application is incomplete, or that the Applicant and/or Applicant's project is ineligible for a loan, and specifying the steps, if any, which the Applicant may take to correct identified deficiencies; or

(b) Notify the Applicant by letter that the Applicant and/or Applicant's project is eligible for a loan, and that the application is complete and shall be evaluated by the Board staff.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. New subsection (b) and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.4. Process for Board Staff Review.

(a) The Board staff shall prepare an analysis of each application. Applications which meet the following criteria shall be recommended for approval to the Loan Committee, on a first come, first served basis:

(1) The Applicant is found creditworthy, and

(2) The collateral and the source of repayment are appropriate for the requested loan amount; and

(3) The Applicant has adequately demonstrated the appropriateness of the loan for use in the project as specified in Section 17935.1 of this Article.

(b) Where additional assistance may be needed from the Loan Committee for a determination, staff may forward those applications and analysis to the Loan Committee without a recommendation.

(c) Where the Applicant does not meet the criteria set forth in subsection (a), the Applicant will be notified in writing of its failure to meet the criteria and the process for appeal of the decision.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. New subsection (c) (reserved) and subsection (d) filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Amendment filed 7–30–98; operative 8–29–98 (Register 98, No. 31).
5. Amendment of subsection (a), repealer of subsection (b), subsection relettering and amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.5. Establishment of the Loan Committee.

(a) A Loan Committee is hereby established to assist the Board in meeting the goals of the Program.

(b) The Loan Committee shall be composed of not more than nine individuals appointed by the Board.

(c) The Loan Committee shall be comprised of a balanced cross–section of individuals from the commercial lending community, both public and private sectors, from throughout the state who demonstrate expertise in financial analysis and credit evaluation.

(d) Members of the Loan Committee shall each be appointed to a three–year term, except that the newly added members terms may be adjusted so that a staggered schedule of terms is established where not more than four members terms shall expire during any single calendar year.

(e) Vacancies shall be filled using the same procedures as used for the initial appointments, and shall be filled for the remaining portion of the respective terms.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Repealer and new section heading and section filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.55. Process for Loan Committee Review.

(a) The Loan Committee shall meet monthly or as needed.

(b) The Loan Committee shall evaluate the staff analysis of loan requests presented by Board staff pursuant to the Review Process of section 17935.4 of this Article.

(c) The Loan Committee shall recommend applications for approval based only on their financial soundness and their ability to meet the underwriting criteria as described in Section 17935.4(a) of this Article.

(d) The Loan Committee may advise the Board as requested on other aspects of the loan program.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
2. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17935.6. Board Approval.

(a) If the Board approves a loan, the Applicant and the Board shall enter into a Loan Agreement pursuant to the terms specified in Section 17935.2 of this Article. Funds shall be disbursed according to the terms of the Loan Agreement.

(b) The Board's loan committee shall be in effect for a period of 90 days following Board approval. The loan commitment may be extended, for cause, for an additional 90 days. Extension of the loan commitment beyond the second 90 day period shall occur only if agreed to by both the Board and the Applicant.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42023.4, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48).
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Repealer of subsection (a), subsection relettering, repealer of subsection (c), and new subsection (b) filed 4–8–98; operative 5–8–98 (Register 98, No. 15).
4. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17936. Auditing of Expenditures of Loan Proceeds.

The Board, or the Department of Finance, may audit the expenditure of the proceeds of any loan made pursuant to this Article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42024, Public Resources Code.

HISTORY

1. New section filed 11–24–92; operative 11–24–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 48). For prior history, see Register 91, No. 14.
2. Change without regulatory effect amending NOTE filed 7–8–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 27).
3. Amendment of NOTE filed 9–15–97; operative 9–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 38).
4. Amendment of NOTE filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17937. Coordination with the County.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17938. Determination of Findings by the Board.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

§ 17939. Determination of Non–Conformance.

HISTORY

1. Change without regulatory effect repealing section filed 3–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 3–4–91 (Register 91, No. 14).

Article 1.2. Leveraging the Recycling Market Development Zone Revolving Loan Fund

§ 17939.1. Purpose of Leveraging the Revolving Loan Fund.

The purpose of leveraging Board funds in the Recycling Market Development Revolving Loan Subaccount (Subaccount) is to increase the funding for loans to recycling–based businesses and to promote the long–term sustainability of the Recycling Market Development Revolving

Loan Program. Subaccount funds will be used to stimulate more lending by private banks, public institutions and non–profit organizations than the Board could make on its own to recycling–based businesses.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42023.1, 42023.6 and 42024, Public Resources Code.

HISTORY

1. New article 1.2 (sections 17939.1–17939.5) and section filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17939.2. Definition.

"Leverage" and "leveraging" means the expenditure, lending, investment or other uses of funds from the Recycling Market Development Revolving Loan Program Subaccount (Public Resources Code Section 42023.1) in a manner that generates or facilitates the generation of financial capital that is made available as loans to borrowers eligible for loans under the Board's Recycling Market Development Revolving Loan Program as described in Article 1.1 of this Chapter. Leveraging programs increase the number and value of loans for specified purposes beyond that which the Board, acting alone, could make. Typical examples of leveraging include, without limitation, pooling funds by multiple entities under specified arrangements to create a greater supply of loan capital for eligible borrowers, loan guarantee programs where an entity guarantees all or a portion of an eligible loan, and insurance where an entity assures that a loan will be repaid in a timely manner.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40506.1, 42023.1, 42023.6 and 42024, Public Resources Code.

HISTORY

1. New section filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17939.3. Types of Leveraging Entities and Programs.

The types of leveraging programs in which the Board may participate, and financing entities with which the Board may contract, include but are not limited to:

(a) The Capital Access Program, that provides loan default insurance as a credit enhancement, pursuant to Public Resources Code 42023.6.

(b) The State Small Business Loan Guarantee program, that provides a state guarantee to entice bank and non–bank entities to lend to California small businesses, pursuant to California Corporations Code section 14000 et seq.

(c) Financial Development Corporations (FDC) that issue state loan guarantees, pursuant to California Corporations Code section 14000 et seq.

(d) Community Development Entities (CDE) for access to the New Markets Tax Credit (NMTC) program, pursuant to Title 1, Subtitle C, Section 121 of the Community Renewal Tax Relief Act of 2000.

(e) Community Development Financial Institutions (CDFI) for access to the Equity Equivalent Investment (EEI) and Program–Related Investment (PRI) programs, pursuant to Title 12, Chapter 47, Subchapter 1, Section 4701 et seq. of the United States Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42023.1, 42023.6 and 42024, Public Resources Code.

HISTORY

1. New section filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17939.4. Leveraging Activities.

The Board may initiate, coordinate or participate in activities, either directly or indirectly, in partnership with public, non–profit or private entities, or by itself, that leverage Recycling Market Development Revolving Loan Program Subaccount (Subaccount) funds. The leveraging of Subaccount funds may include, but is not limited to, the transfer and/or encumbrance of Subaccount funds for leveraging; the establishment of trust accounts for the receipt, retention and expenditure of funds designated for leveraging; the pooling of Subaccount funds with other individual or multiple entities under specified arrangements; the use of Subaccount funds in support of loan guarantee programs, where an entity guarantees all or a portion of an eligible loan, or as insurance where an entity assures that a loan will be repaid in a timely manner; the use of Subaccount funds for grants or loans to public, private or non–profit organizations to implement leveraging programs; and the acceptance of funds from investors and institutions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42023.1, 42023.6 and 42024, Public Resources Code.

HISTORY

1. New section filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

§ 17939.5. Loan Sale.

(a) The Board may sell loans, either in bulk quantity or individually; in whole or in part; on a recourse or non–recourse basis; on an advance commitment, forward, or participation basis; and may retain or relinquish the servicing rights; (b) the Board shall not sell its loans if the loan sale results in more than a twenty–five percent (25%) discount of the principal amount, excluding any expenses or reserves required as a condition of the loan sale; and (c) all proceeds received from the sale of loans shall be deposited into the Recycling Market Development Revolving Loan Program Subaccount.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 40506.1, Public Resources Code.

HISTORY

1. New section filed 10–18–2005; operative 11–17–2005 (Register 2005, No. 42).

Article 2. Recycling Investment Tax Credit Program

§ 17940. Regulatory Effect of Questions.

NOTE: Authority cited: Section 40502, Public Resources Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 2).
2. Change without regulatory effect repealing section filed 3–15–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 12).

§ 17941. Recycling Investment Tax Credit Program.

NOTE: Authority cited: Section 40502, Public Resources Code; and Sections 17052.14 and 23612.5, Revenue and Taxation Code. Reference: Sections 17052.14 and 23612.5, Revenue and Taxation Code.

HISTORY

1. New section filed 9–9–91; operative 10–9–91 (Register 92, No. 2).
2. New subsections (f)(1)–(7) and (f)(13)–(14) and subsection renumbering, new subsections (h)(2)(A)–(C) and subsection redesignation filed 10–28–92; operative 11–27–92 (Register 92, No. 44).
3. Change without regulatory effect repealing section filed 3–15–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 12).

Article 3. Rigid Plastic Packaging Container Program

§ 17942. Regulatory Effect of Questions and Answers; Effective Dates.

(a) Both the question and answer in each section have regulatory effect for purposes of implementation and enforcement. In addition to the regulations in this article, statutory provisions contained in §§ 42300 through 42345 of the Public Resources Code govern the Rigid Plastic Packaging Container Program.

(b) The requirements of these regulations go into effect for all rigid plastic packaging containers except those identified in Section 17944.2 on January 1, 1995, and for all calendar years thereafter, if at least 60 percent of the single family homes in the state are served by curbside collection programs that include beverage container recycling by January 1, 1994.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Section 42300 et seq., Public Resources Code.

HISTORY

1. New article 3 (sections 17942–17949) and section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).

§ 17943. Purpose and Definitions.

(a) What is the purpose of these regulations?

These regulations provide guidance to those who must comply with the Rigid Plastic Packaging Container Program requirements, and in-

clude a description of the procedures that product manufacturers, container manufacturers, resin manufacturers, distributors, and importers must follow to meet reporting, certification, and documentation requirements. These regulations pertain only to rigid plastic packaging containers sold or offered for sale in California, regardless of where the containers or the products they hold are produced.

(b) Definitions.

The following definitions, as well as definitions found in Public Resources Code §§ 42300–42345, apply to the regulations in this Article.

(1) The "Board" means the California Integrated Waste Management Board.

(2) "Capable of Multiple Re–closure" means a rigid plastic packaging container that can be closed and re–closed with its attached or unattached relatively inflexible lid.

(3) "Cosmetic" means those articles pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321 (i)), and pertinent regulations in effect as of January 1, 1994, which are 1) intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and 2) articles intended for use as a component of any such articles; except that such term shall not include soap as defined in 21 C.F.R. 701.20(a)(1) and (2). Products intended for cleansing the human body and which are not "soap" as defined in 21 C.F.R. 701.20(a)(1) are classified as "cosmetics."

(4) "Container Manufacturer" means the manufacturer of any rigid plastic packaging container as defined in Section 17943(b)(30) of this Article.

(5) "Curbside Collection Program" means a recycling program that collects materials set out by homeowners for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop–off programs, material recovery facilities, or plastic recovery facilities.

(6) "Drugs" mean those articles as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) and pertinent regulations, which are as follows:

> articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopeoeia of the United States, or official National Formulary, or any supplement to any of them; and articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or ani-

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mals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in the clauses.

Drugs include prescription, nonprescription, and over–the–counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(7) "Final End User" means the person who purchases a rigid plastic packaging container in order to use the product held by the container. The final end user is that person who removes the product from the container and discards the container. "Person," includes an individual, firm, organization, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(8) "Food" means those articles as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, which are used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

(9) "Infant Formula" as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, means food which a manufacturer claims is to be used solely as food for infants, because it simulates human milk or is suitable as a substitute for human milk.

(10) "Introduced" means any rigid plastic packaging container or product packaged in rigid plastic packaging containers that are first offered for sale and sold in California after January 1, 1995. Products for which such claims as "new" or "improved" are made and products for which the packaging has been changed by such criteria as size, color, or labeling, are not "introduced" packages or products.

(11) "Label" as used in the definition of product manufacturer, means a display of written, printed or graphic material upon the immediate container of any product.

(12) "Manufacturer" or "Product Manufacturer" means the producer or generator of a product which is sold or offered for sale in the state and which is stored inside of a rigid plastic packaging container. For the purposes of section 17948(a) and 17949(c) and (d) of this Article, "manufacturer" includes all subsidiaries and affiliates.

(A) Identification of the Product Manufacturer, for the purposes of this program, shall be determined by the following hierarchy:

1. When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity shall be considered the product manufacturer.

2. When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor shall be considered the product manufacturer.

3. When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer shall be considered the product manufacturer.

(B) "Stored" means that the container normally holds the product for more than seven days. For purposes of these regulations, point–of–sale products are not "stored" in a container for more than seven days.

(C) Any entity whose name may not appear on a label but which has a corporate relationship (*i.e.*, parent/subsidiary or affiliate relationship) with an identified product manufacturer shall be allowed to assume the responsibilities of the product manufacturer as they relate to the requirements of Section 17944. The product manufacturer may be located inside or outside California, and/or inside or outside the United States.

(13) "May" means a provision is permissive.

(14) "Material Type" means broad feedstock categories such as paper, glass, plastic or aluminum. "Material type" does not mean individual plastic resins.

(15) "Measurement Period" means the time period for which compliance is being determined as part of the certification or auditing process described in §§ 17946, 17946.5, and 17947 of this Article.

(A) Unless the reuse or refill compliance options, pursuant to Section 17944, are used, "measurement period" shall be the preceding calendar year. If the reuse or refill compliance option is being used, the product manufacturer may establish another measurement period that is appropriate to the product life cycle. If the product manufacturer establishes a measurement period other than the calendar year, the Board may request documentation to substantiate the basis for the alternative measurement period.

(B) For products introduced for sale in California on any day other than January 1 of any year, the first measurement period for the first year in which the product's containers are required to comply with the program requirements shall be the remaining partial calendar year in which the product was introduced for sale in addition to the following calendar year. For all subsequent years, the measurement period shall be the calendar year, unless either the reuse or refill compliance option is used, in which case the manufacturer may establish a measurement period unique to its product, as described above.

(16) "Medical Device" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, and includes the following:

(A) any instrument, apparatus, implement, machine, contrivance or implant which is recognized in the National Formulary or United States Pharmacopoeia or any additional supplement thereof,

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or animal, or

(C) intended to affect the structure or any function of the body of man or animal.

A medical device does not achieve any of its principle intended purposes through chemical action, nor is it dependent upon being metabolized to achieve its intended purpose.

(17) "Medical Food" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, which includes the following:

(A) foods formulated to be consumed or administered under the supervision of a physician, and

(B) foods intended for specific dietary management of disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

For the purposes of these regulations, medical food is food that is consumed or directly placed in the stomach or intestines through a tube, or other food which is used to manage a disease or a medical condition, or food labelled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet". For the purposes of these regulations, medical food is not food for which popular dietary claims are made such as "low–fat" or "low–sodium."

(18) "Must" means a provision is mandatory.

(19) "Non–Source Reduced Container" means a container that is not considered source–reduced under the criteria established for this program as found in Sections 17943 (31) and 17946.5(a)(2) and (b)(4) of this Article.

(20) "Original Container" means a rigid plastic packaging container that is holding a product when initially sold to the final end user and which may later be reused or refilled, as used in § 17946.5(b)(2) and (b)(3) of this Article.

(21) "Particular Type Rigid Plastic Packaging Container" is a rigid plastic packaging container which holds a single type of generic product, such as milk or detergent.

(22) "Point–of–Sale Containers" are containers in which products are placed for sale directly to and intended for immediate consumption by the final end–user.

(23) "Postconsumer Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end–use and product life cycle. Postconsumer material does not include mate-

rials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

Rigid plastic packaging containers holding obsolete or unsold products and post-industrial scrap that is commonly disposed, and not commonly reused within an original manufacturing process, shall be considered postconsumer material when used as feedstock for new products.

Internally generated scrap that has been commonly disposed may be considered postconsumer material if it is later used in a process other than the original manufacturing and fabrication process.

(24) "Product Associated Rigid Plastic Packaging Container" means a brand-specific rigid plastic packaging line which may have one or more sizes, shapes or designs and which is used in conjunction with a particular generic product line. A product associated container holds a brand-specific product such as Brand "X" salad dressing or Brand "Y" automotive oil.

(25) "Recycled" means a product or material which has been diverted from disposal in a landfill and has been reused in the production of another product.

(26) "Recycling Rate" means one of the following:

(A) The proportion, as measured by weight, volume, or number, that a particular type of rigid plastic packaging container sold or offered for sale in the state, such as a milk jug, soft drink container, or detergent bottle, is being recycled in a given calendar year.

This recycling rate calculation includes all rigid plastic packaging containers sold or offered for sale in California that are used to package the generic product for which the particular type recycling rate is calculated.

(B) The proportion, as measured by weight, volume, or number, that a product-associated rigid plastic packaging container sold or offered for sale in the state, is being recycled in a given calendar year.

(27) "Refillable package" means a rigid plastic packaging container which the Board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product held by the package. For the purpose of this program, the product manufacturer or the product manufacturer's agent may refill a package.

(28) "Replacement product" means a product that is sold with the intent that it be removed from its package in order to replenish the contents of the original container that a consumer purchased that previously held the identical product.

(29) "Reusable package" means a rigid plastic packaging container which the Board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(30) "Rigid Plastic Packaging Container" means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(A) Rigid plastic packaging containers are capable of multiple re-closure, are sold holding a product, and are composed entirely of plastic with the exception of caps, lids, labels and other additives such as pigments, colorants, fillers, and stabilizers that are an integral part of the plastic polymer compound. Plastic caps and lids may be considered to be part of a rigid plastic packaging container at the product manufacturer's discretion.

(B) The total volume of the closed container will establish if the container is within the eight ounce to five gallon size requirements. For those containers measured in liquid or fluid volume, such as fluid ounce, gallon, milliliter, or liter, the product manufacturer may use either the labeled volume or the volumetric volume. The metric equivalent for the following U.S. liquid measures is as follows: eight (8) fluid ounces is equivalent to 236.59006 milliliters, and five (5) gallons is equivalent to 18.9272 liters. Containers for products which are labeled and sold by weight or an item count must be measured for their volumetric equivalency.

(C) "Flexible container" is a container that can be flexed, folded, and twisted, without the aid of tools, without damaging the container.

(D) "Rigid container" is a container which is not a flexible container and has essentially the same shape empty as full.

(E) If it is unclear whether a container is a rigid plastic packaging container, the Board will make that determination on a case by case basis. The Board will make that determination by considering, at a minimum, how the container compares to others that are clearly regulated or excluded by the program.

(31) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

1. If the product held by the container was sold prior to January 1, 1990, the non-source reduced container weight is the average weight of the container during the first 60 days commencing with the first day of sale in multiple jurisdictions in 1990.

2. If the product held by the container was initially sold on or after January 1, 1990, the non-source reduced weight is the average weight of the container during the first 60 days it was introduced for sale in multiple jurisdictions.

(B) A rigid plastic packaging container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

1. The packaging used for the product by the manufacturer on January 1, 1995.

2. The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

3. The packaging used in commerce that same year for similar products whose containers have not been considered source reduced. "Similar products" are the same products held by "particular type rigid plastic packaging containers", as defined in (21) of this section. The product manufacturer may demonstrate a comparison to "similar products" made by the same product manufacturer or made by another manufacturer.

(C) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

1. Substituting a different material type for a material which previously constituted the principle material of the container.

2. Increasing a container's weight per unit or use of product after January 1, 1991.

3. Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material. The Board may review any information provided by the manufacturer to determine if the packaging change adversely affects the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(D) For the purposes of calculating source reduction, the stated weight of a non-source reduced container used for comparison purposes must be be weight of the actual non-source reduced container used for twelve consecutive months. If the non-source reduced container has not been used for twelve consecutive months, the product manufacturer must provide information to the Board to support its claim if the Board requests supporting documentation as described in Section 17946.5. In addition, the stated weight of the source reduced container must be no greater than the weight of the actual container used for the duration that the source reduction compliance option is used.

1. If the source reduction of the container was achieved by manufacturing the container with a different resin than was used for the non-source reduced container, the new container is considered source reduced for the purpose of this program.

2. Any source reduction achieved by changing the rigid plastic packaging container to a flexible plastic container may be credited to other containers as part of the averaging method of compliance described in Section 17944 (b), Container Requirements.

3. If a rigid plastic packaging container for a specific product is entirely eliminated and the same product is sold in California without any packaging, the source reduction may be credited to other containers as part of the averaging method of compliance described in Section 17944(b), Container Requirements.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 40170, 42300, 42301, 42310, 42330 and 42340, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. Change without regulatory effect amending subsections (b)(12)(B) and (b)(22) filed 3–24–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Amendment of subsections (b)(26)(A)–(B) filed 9–17–2001 as an emergency; operative 9–17–2001 (Register 2001, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–15–2002 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(26)(A)–(B) refiled 1–16–2002 as an emergency; operative 1–16–2002 (Register 2002, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–16–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–16–2002 order transmitted to OAL 2–28–2002 and filed 4–10–2002 (Register 2002, No. 15).
6. Change without regulatory effect repealing subsections (a)(26)(A)–(B) and relettering subsections filed 1–31–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 5).

§ 17944. Container Requirements.

(a) I am a product manufacturer responsible for ensuring that rigid plastic packaging containers comply with program requirements. What standards must these containers meet?

On or after January 1, 1995, all rigid plastic packaging containers sold or offered for sale in the state must meet one of the following criteria:

(1) Be made from at least 25 percent postconsumer material.

(2) Be recycled at one of the following rates:

(A) All product–associated rigid plastic packaging containers must have a 45 percent recycling rate, or

(B) All particular–type rigid plastic packaging containers must have a 45 percent recycling rate.

(3) Be reusable or refillable.

(4) Be a source reduced container.

(5) Be a container which contains floral preservative and is subsequently reused by the floral industry for at least two years. This compliance option is only available for containers used by the floral industry in California. Similar containers sold to nurseries, landscapers, retail stores, and other outlets that are not wholesale or retail flower sellers or growers do not qualify for this compliance option.

For purposes of this section, rigid plastic packaging containers that are "sold or offered for sale" in the state refers to rigid plastic packaging containers that are manufactured on or after January 1, 1995, and subsequently sold or offered for sale in California.

(b) Must every rigid plastic packaging container, that is not the subject of waiver pursuant to Section 17944.2(a) or exempt pursuant to Section 17944.5(a) of this Article, meet one of the compliance options listed in subdivision (a) of this section?

No, every rigid plastic packaging container must not individually meet one of the compliance standards. A product manufacturer may achieve compliance for its containers based on an average. This average shall only be allowed for rigid plastic packaging containers for which the same compliance option is used. Averaging may be calculated using either data specific to containers sold and recycled in California or containers sold and recycled nationwide. Manufacturers may average the source reduction, postconsumer material, refill, or reuse options to express compliance for the containers they use.

Averaging may be based on the manufacturer's entire product line or any sub–lines determined by the manufacturer. If averaging is used, every rigid plastic packaging container must be included in an average or comply through another compliance alternative.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42301, 42310, 42326, 42330 and 42340, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. New subsection (a)(5) filed 5–30–97; operative 5–30–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Change without regulatory effect repealing subsections (a)(2)(A)–(B), relettering subsections and amending subsection (a)(5) filed 1–31–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 5).

§ 17944.2. How Will Waivers Be Granted?

(a) Which rigid plastic packaging containers are eligible for waivers from this program?

Waivers are allowed under the following conditions:

(1) The postconsumer content compliance option is waived for rigid plastic packaging containers if they cannot meet the postconsumer material requirement of § 17944 of this Article and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. Containers waived under this condition must comply under another compliance option.

(2) The postconsumer content compliance option of § 17944 of this Article is waived for rigid plastic packaging containers if it is technologically infeasible to use 25 percent postconsumer content. Containers waived under this condition must comply under another compliance option.

(3) All requirements of § 17944 of this Article are waived for a product manufacturer if by January 1, 1995, 50 percent, by number, of the product manufacturer's rigid plastic packaging containers sold or offered for sale in California, contain at least 25 percent postconsumer material, and all the manufacturer's containers will be in compliance using any option listed in Section 17944 on or before January 1, 1996.

(4) All requirements of § 17944 of this Article are waived for an introduced product or package, pursuant to § 17943, for 12 months immediately after the date on which it is first sold or offered for sale in California.

(b) I am a product manufacturer. How do I receive a waiver?

(1) To receive a waiver for your rigid plastic packaging containers pursuant to Section 17944.2(a), you may only petition the Board as part of the compliance verification and auditing process described in Sections 17944.2 and 17947 of this Article. You must submit to the Board by certified mail a written request containing the information below, in order for the Board to consider granting a waiver:

the rigid plastic packaging container(s) for which the waiver is being requested, the basis for the waiver, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communications relating to the petition.

Petitions to the Board for a waiver pursuant to Section 17944.2(a)(5) above must also include the following:

a signed affidavit stating that the product held by the container was introduced into commerce in California after January 1, 1995, and that the product conforms to the "introduced" definition. The affidavit must include the date on which the product was first sold or offered for sale in California. The product manufacturer must supply documentation to substantiate the date of entry to the California marketplace, such as evidence of a California–based media campaign.

(2) Pursuant to section (a)(3) of this section, the Board will grant a general waiver for all product manufacturers that use rigid plastic packaging containers if less than 60 percent of California's single family households have access to curbside collection programs which include beverage container recycling, as described in (a)(3) of this section. You may not petition the Board for this waiver. The Board will consult the Department of Conservation's, Division of Recycling biannually to obtain the information necessary to determine whether this waiver should go into effect. This information shall be made public at the meetings of the California Integrated Waste Management Board and/or the Local Assistance and Planning Committee meetings held in the months of January and July of each year.

(3) Product manufacturers who want a waiver pursuant to Section 17944.2(a)(4) above shall not petition the Board for a waiver. If the Board requests certification and documentation from a product manufacturer that wants to be granted this waiver, the product manufacturer may demonstrate at that time that 50 percent, by number, of its rigid plastic packaging containers sold or offered for sale in California contained at least 25 percent postconsumer material during the calendar year 1995, and all of the manufacturer's containers are in compliance using any option listed in Section 17944 of this Article on or before January 1, 1996.

(c) How will the Board inform a product manufacturer if its petition for a waiver has been accepted or rejected?

Upon receipt of a product manufacturer's petition for a waiver, the Board will review the petition and will convey its finding to the product manufacturer within 60 days. All Board responses shall be in the form of written correspondence directed to the product manufacturer's designated contact person.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42310.1, 42326 and 42330, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. Change without regulatory effect repealing subsections (a)(3), (a)(6) and (b)(4) filed 3–24–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Change without regulatory effect renumbering former subsections (a)(4)–(5) to (a)(3)–(4) after repeal of former subsection (a)(3) in prior action filed 3–28–97; effective 4–23–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
4. Editorial correction of HISTORY 3 (Register 97, No. 17).

§ 17944.5. Exempt Rigid Plastic Packaging Containers.

(a) Which rigid plastic packaging containers are exempt from the requirements of this Article?

Pursuant to Public Resources Code § 42340, the following containers are exempt from the requirements of this Article:

(1) Rigid plastic packaging containers produced in or out of the state which are destined for shipment to other destinations outside the state and which remain with the products upon that shipment. "Destined for shipment to other destinations outside the state" means that the sale of the rigid plastic packaging container to the final end user occurs outside California,

(2) Rigid plastic packaging containers that contain drugs, cosmetics, food, medical devices, medical food, or infant formula as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.),

(3) Rigid plastic packaging containers that contain products regulated by the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.),

(4) Rigid plastic packaging containers that are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by federal packaging material specifications and testing standards set forth in Section 178.509 of Title 49 of the Code of Federal Regulations, or are subject to testing standards set forth in Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of Federal Regulations, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

(b) I am a product manufacturer. Must I petition the Board to verify that my rigid plastic packaging containers are exempt from the requirements of this Article?

No, you are not required to petition the Board to verify that your rigid plastic packaging containers are exempt. If requested by the Board to certify compliance pursuant to section 17946 of this article, you must submit to the Board by certified mail a written response containing the information below:

the rigid plastic packaging container(s) for which the exemption is being claimed, the basis for the exemption, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communication relating to the exemption.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42326 and 42340, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. Change without regulatory effect amending subsection (a)(4) filed 3–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 12).
3. Change without regulatory effect amending subsection (a)(2) filed 3–24–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

§ 17945. Who Must Comply With These Regulations?

(a) Who is responsible for ensuring that the containers regulated by this program are in compliance with the requirements of this Article?

(1) Product manufacturers, pursuant to Section 17943(b)(12) of this Article are responsible for compliance with the requirements of the rigid plastic packaging container program.

(2) Product manufacturers that are responsible only for products exempt under section 17944.5 are required to comply only with section 17944.5(b).

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42301 and 42325, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).

§ 17946. Who Must Certify That Compliance With This Article Is Met?

(a) Who must submit certifications?

Product manufacturers, pursuant to Section 17943(b)(12) of this Article, and only upon notification from the Board as described in this section, are required to certify to the Board that the containers that they use comply with the rigid plastic packaging container requirements if they sell or offer for sale a product in a rigid plastic packaging container that is sold to a final end–user in California.

Upon the Board's request, a product manufacturer must submit a Board–supplied product manufacturer certification containing information that includes, but is not limited to, the information described in section (i) below.

A product manufacturer must, in addition, submit a container manufacturer certification if the product manufacturer chooses compliance based on the postconsumer content or source reduction compliance options, pursuant to this section and Sections 17944 and 17946.5 of this Article.

Container manufacturers must supply a certification to product manufacturers that includes the information described in section (h) below, if the container manufacturer produces rigid plastic packaging containers that either

(1) Meet the postconsumer material compliance option, or

(2) Meet the source reduction compliance option where the source reduction was achieved by reducing the weight of the containers used for a specific amount (ounces, grams, etc.) of product.

Proprietary information included in a certification submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in section 17948.

(b) When must certifications be submitted?

The Board may request a completed certification from a product manufacturer once per calendar year or once per a product manufacturer's compliance measurement period, pursuant to Section 17943(b)(15) of this Article. The Board shall not initiate requests for certifications until January 1, 1996, and will not require a product manufacturer to submit evidence of its compliance until 90 days after the end of the calendar year or measurement period established pursuant to Section 17943(b)(15).

(c) Where can I get a certification form?

As part of the Board's notification to product manufacturers that they shall submit a compliance certification, the Board will include a product manufacturer certification form and a container manufacturer certification form. The Board will request that compliance certification be made by certified mail.

(d) How will the Board determine which product manufacturers are to submit a rigid plastic packaging container certification form and how will the Board notify product manufacturers of its determination?

In addition to random selection, the Board may use the following criteria to determine when to request a certification form from a product manufacturer: container type, product type held by the container, company size, or receipt of information that causes the Board to suspect that a container is not in compliance. The Board will request a certification of compliance from a product manufacturer in writing.

(e) How long do I have to respond to a Board request for a completed certification forms?

A product manufacturer's completed certification forms must be postmarked no later than 90 calendar days from the date on which the Board's request arrived via certified mail. Product manufacturers may, in writing prior to the due date, request an extension of up to an additional 30 days to respond to the Board's request for certification. An extension may be granted by the Board if the product manufacturer provides the Board with documentary evidence to support its request based on criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon the Board's evaluation.

(f) As a product manufacturer, how will I know if my certification forms are complete?

The Board will review the certification forms to determine (1) the completeness of the certification forms; and (2) if not complete, any additional information or documentation needed. The Board will then, via certified mail, notify the product manufacturer as to the completeness of the forms. The Board's notice will state whether any additional information or documentation is required. The product manufacturer will have 30 days after the receipt of the notice to provide the required information or documentation.

(g) If I am a product manufacturer and I wish to claim compliance through the source reduction or postconsumer content options, as described in Section 17944 of this Article, who must provide certification to the Board: I or the container manufacturer?

When the basis for compliance is either the postconsumer material option or the source reduction compliance option where the reduction was achieved by a simple decrease in container weight, then the container manufacturer must provide certification to the product manufacturer. If either of these two compliance options are claimed, you must request the appropriate container manufacturer(s) to complete a Board–supplied container manufacturer certification form. This form will be provided to you with the original request for certification from the Board or at your request. This form must be completed by the container manufacturer, and must accompany your product manufacturer certification form when sent to the Board. The required information to substantiate either of these two compliance claims is described in section (h) below.

Alternatively, if the container manufacturer provides you with all the information described in section (h) below as part of standard business procedures, then that same information may be submitted to the Board in lieu of a completed container manufacturer form supplied by the Board. As with the Board–supplied container manufacturer certification, the information supplied by the container manufacturer to you must be submitted with any product manufacturer certification that is submitted to the Board.

The product manufacturer is responsible for compliance with the requirements in Section 17944, but the container manufacturer is responsible for ensuring the accuracy of any information it provides to you.

(h) If I am a container manufacturer, what type of information must I provide in my certification?

You must provide, at a minimum, the following information:

(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying required information;

(2) The name, address, and telephone number of the product manufacturer at whose behest you are completing the certification form and the name and title of the person at that company who requested that you complete a certification form. If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in (g) of this section and which includes the information required in this section, then you do not need to provide the information in the previous sentence;

(3) For compliance with the postconsumer material option, state the following: the percentage of postconsumer material in the containers in question, the total weight of resin used to manufacture the specified containers, and the total weight of postconsumer resin used to manufacture the specified containers.

(4) For compliance with the source reduction option that was achieved by a simple reduction in container weight, state the following: the percentage of weight reduction for the containers, and the average weight of the containers of the packaging line before and after source reduction occurred.

(5) Any other information the Board determines is necessary to verify compliance.

(6) The certification must be submitted under penalty of perjury, according to the following format:

"I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

_____ _____

(Date) (Signature)

(i) If I am a product manufacturer, what type of information must I provide in my certification?

The information submitted on a Board–supplied product manufacturer certification form shall include, but not be limited to, the following:

(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying the required information;

(2) The advertised name of your product containers regulated by this article and the resin type used for the containers;

(3) The compliance option, as described in Sections 17943 and 17944 of this Article, used to attain compliance or a statement that the product container is not in compliance with program requirements. The information you are required to provide depends on the compliance option used.

(A) For compliance with the postconsumer material option, state the percentage of postconsumer material in the containers for which you claim compliance.

(B) For compliance with any of the recycling rate options, state which recycling rate option was used, the recycling rate achieved, and a description of the products held by the containers that have achieved the stated rate.

(C) For compliance with the reuse option, state the average number of times the container was reused.

(D) For compliance with the reuse option, state the average number of times the container was refilled.

(E) For compliance with the source reduction option where the source reduction was achieved by either concentrating the product, or achieved by a combination of concentrating the product and reducing the weight of the container that holds the product, you must provide the following:

1. The percentage the container was source reduced, and

2. The average weight per unit of product or the average weight per use of product before the source reduction was made and the average weight per unit of product or the average weight per use of product after the source reduction was made.

(4) Any other information the Board determines is necessary to verify compliance.

(5) The certification must be submitted under penalty of perjury, according to the following format:

"I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

_____ _____

(Date) (Signature)

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42320, 42321, 42323 and 42325, Public Resources Code.

HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. Change without regulatory effect amending subsection (a)(2) filed 3-24-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
3. Amendment of subsections (a) and (e), new subsection (f), subsection relettering and amendment of newly designated subsections (g) and (h)(2) filed 6-2-2003 as an emergency; operative 6-2-2003 (Register 2003, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-30-2003 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to 6-2-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 3).
5. Amendment of subsections (a) and (e), new subsection (f), subsection relettering and amendment of newly designated subsections (g) and (h)(2) filed 1-12-2004; operative 1-12-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 3).

§ 17946.5. Documentation Requirements.

The Board may require product manufacturers and container manufacturers to submit to the Board supporting documentation that substantiates their compliance claims following the receipt of a certification. Except as otherwise stated, documentation to substantiate a compliance claim must be provided for the preceding calendar year.

Proprietary information included in a supporting documentation submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in subsection 17948(i).

(a) I am a product manufacturer. What information must I provide to substantiate the certification claims made in response to Section 17946?

The information necessary to substantiate compliance varies depending upon the compliance option selected.

(1) For rigid plastic packaging containers for which the postconsumer material compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:

(A) Certification from the container manufacturer stating the total weight of postconsumer resin in the containers for which compliance is claimed and the total weight of all resin used in the containers for which compliance is claimed. If later requested by the Board, the container manufacturer must provide copies of shipment orders, bills of lading, purchase orders, or other evidence of receipt of postconsumer resin during the previous calendar year for the manufacture of the containers for which compliance is claimed,

(B) The formula and data used to calculate the percentage of postconsumer material in the container. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:

For a single or multiple container lines:

$$\text{Percent of Postconsumer Material} = \frac{\text{total weight of postconsumer resin used in all containers}}{\text{total weight of postconsumer resin used in all containers + total weight of all other resins used in all containers}} \times 100$$

To comply under this option the percent of postconsumer must be equal to or greater than 25.

(C) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.

(2) For rigid plastic containers for which the source reduction compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:

(A) The percentage the container has been source reduced,

(B) The container weight per unit or use of product of the non-source reduced container and the container weight per unit or use of product for the container for which source reduction is claimed,

(C) The formula and data used to calculate the percentage that the containers were source reduced. The following formulas may be used, if mathematically appropriate for the subject containers, or the container manufacturer may supply its own appropriate formula:

Formula to calculate the percentage of a single packaging line:

$$\text{Percent Source Reduced} = \frac{\left(\frac{W_n}{U_n} - \frac{W_s}{U_s}\right)}{\left(\frac{W_n}{U_n}\right)} \times 100$$

Formula to calculate the percentage of source reduction for multiple packaging lines:

$$\text{Percent Source Reduced} = \frac{\sum_i N_i \left(\frac{W_{n_i}}{U_{n_i}} - \frac{W_{s_i}}{U_{s_i}}\right)}{\sum_i N_i \left(\frac{W_{n_i}}{U_{n_i}}\right)} \times 100$$

where:

W_n = average weight or volume capacity of the non-source reduced containers

U_n = units or uses of product per non-source reduced container

W_s = average weight or volume capacity of the source reduced containers

U_s = units or uses of products per source reduced container

i = each container line complying with this source reduction option

N_i = total annual number of containers in container line *i* complying with the source reduction option

To comply under this option the Percent Source Reduced must be equal to or greater than 10.

(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.

(3) For rigid plastic packaging containers for which the reuse compliance option is claimed, the product manufacturer must provide, at a minimum, the following information:

(A) A statement of the measurement period that was used to quantify the amount that the identified containers were reused, and a quantitative description of how that measurement period was determined;

(B) Copies of sales reports or other evidence that show the following:

1. The total volume or weight of the product sold in the original containers in the established measurement period, and

2. The total volume or weight of the replacement product sold.

Sales reports of the product sold in the original rigid plastic packaging container and sales reports of the replacement product must be identified separately; and

3. If the replacement product is of a different strength than the original product, the product manufacturer must provide the appropriate conversion factor. The conversion factor shall explain the number of uses per weight unit or volume unit of product for both the original product and for the replacement product.

(C) The formula and data used to calculate the number of reuses achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:

Formula to calculate the number of reuses for a given measurement period for a single container line:

$$\text{Average Reuse Per Container Liner} = \frac{\text{(number of replacement product packages sold)}}{\text{(number of original containers sold)}} \times n$$

where:

n = the number of times the replacement product packages will fill the original container to accomplish the same number of units or uses of product held by the original container.

Formula to calculate the average number of reuses for a given measurement period for multiple container lines:

$$\text{Average Reuse Per Container} = \frac{\Sigma R_i}{\Sigma O_i}$$

where:

i = each container line seeking this compliance option

R_i = total number of units or uses sold in replacement products packages calculated by multiplying the number of units or uses in each replacement package by the number of replacement packages sold during the measurement period.

O_i = total number of units or uses sold in original containers calculated by multiplying the number of units or uses in each original container by the number of original containers sold during the measurement period.

To comply under this option, the Average Reuse Per Container must be equal to or greater than 5.

(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.

NOTE: This option will demonstrate compliance for the original containers only; the replacement product container must comply under another option.

(4) For rigid plastic packaging containers for which the refill compliance option is claimed, the product manufacturer must provide, at a minimum the following information:

(A) A statement of the measurement period that was used to quantify the amount that the identified containers were refilled, and a quantitative description of how that measurement period was determined;

(B) Copies of sales reports or other evidence which shows the following:

1. The total number of containers sold during the measurement period.

2. The total number of original containers used by the product manufacturer during the established measurement period.

(C) The formula and data used to calculate the number of refills achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:

Formula to calculate the number of refills for a given measurement period for a single container:

$$\text{Average Refills Per Container} = \frac{\text{number of containers sold during the measurement period}}{\text{number of new original containers used by the product manufacturer during the measurement period}}$$

Formula to calculate the number of refills for a given measurement period for multiple container lines:

$$\text{Average Refills Per Container} = \frac{\text{total weight of all containers sold during the measurement period}}{\text{total weight of all new original containers used during the measurement period}}$$

To comply with this option, the Average Refills Per Container must be equal to or greater than 6.

(F) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.

(5) For rigid plastic containers for which the particular type or product associated recycling rate compliance option is claimed, the product manufacturer must show the recycling rate for that specific particular type of container sold in California and the number of those containers collected in California for recycling. At a minimum, the product manufacturer must do the following:

(A) Present to the Board in writing for its approval the methodology used to determine the sales and recycling figures. This methodology must explain in detail how the figures were derived or obtained. The Board must approve of the methodology prior to its use to determine a particular type or product associated recycling rate. Beginning for compliance year 1996, for any given calendar year, if a product manufacturer elects to base compliance on this option, the methodology must have been submitted to the Board by July 1 of the previous year. A product manufacturer may use the same methodology that the Board adopts to determine the aggregate recycling rate if the product manufacturer can demonstrate how the method is appropriate and comparable.

The Board shall notify the product manufacturer within 60 days of the postmark of the request as to whether the methodology is acceptable. If a methodology is determined to be unacceptable, the Board will provide the rationale for why the methodology is not acceptable and provide suggestions as to how the proposed methodology could be altered to be made acceptable.

(B) Once a methodology has been approved, that same methodology must be used to determine the figures submitted as part of a compliance claim. If the approved methodology is not used and the manufacturer selects this compliance option, the Board may reject the product manufacturer's compliance claim. The methodology remains valid to determine compliance in future years, unless it is modified by the product manufacturer without the Board's approval. Procedures for obtaining authorization for modifying a methodology are identical to those for establishing the initial methodology as stated in this section. The Board may request original data.

(C) Product manufacturers that use the particular type recycling rate to comply with this program may designate any person as the entity to design the methodology, perform the study, and submit supporting documentation to the Board on behalf of the product manufacturers who are using the particular type rigid plastic packaging containers.

(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.

(E) To comply under this option, the recycling rate must be equal to or greater than 45 percent.

(6) Product manufacturers using the floral industry compliance option, as specified in section 17944(a)(5), shall submit to the Board for review and approval a methodology showing how affected containers will meet the two year reuse criteria. For 1997, the product manufacturer shall submit the proposed methodology to the Board on or before July 1, 1997. For subsequent years, the manufacturer shall submit the proposed methodology to the Board on or before July 1 of the calendar year immediately prior to the year the manufacturer intends to use this compliance option.

The methodology shall include:

(A) The proposed method used to determine the number of containers sold to the floral industry in California;

(B) The proposed method used to determine the total number of containers sold in California; and

(C) The proposed method used to determine the average reuse (in years) of the containers purchased by the floral industry in California. One acceptable method would be a statistically valid survey of the product manufacturer's floral industry customers, to be conducted by an independent contractor. If this method is used, a copy of the proposed survey form must be included in any submittals to the Board.

(7) Based upon information received related to subdivisions (1) through (6) of this section, the Board may request additional information as it deems necessary.

(b) Can a product manufacturer switch the option it uses to attain compliance for its rigid plastic packaging containers?

A product manufacturer may change the option it uses to attain compliance for its rigid plastic packaging containers one time per calendar year or other established measurement period.

(c) When must I submit supporting documentation to the Board?

Following receipt of your compliance certification, the Board may request that you submit documentation to support your compliance claim. You must submit supporting documentation at the Board's request. If the Board wants you to submit supporting documentation, the Board will mail a request and you will have 60 days following the postmarked date to supply the information. Supporting documentation shall be submitted to the Board by certified mail. If the Board does not request supporting documentation, you should not include it with your compliance certification.

(d) How long must I keep the records required by these regulations?

For all compliance standards used by a product manufacturer other than source reduction, all documentation supporting any compliance claim must be available for at least four years following the end of the compliance period. For source reduction compliance claims, the supporting documentation for the baseline year as specified in subdivision (a)(2) of this section must be available to the Board for at least four years after the product is no longer sold in California.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42320, 42321 and 42325, Public Resources Code.

HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).
2. New subsections (a)(6)-(a)(6)(C), renumbering and amendment of former subsection (a)(6) to new subsection (a)(7), and amendment of NOTE filed 5-30-97; operative 5-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsection (d) filed 2-2-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-2-2000 order transmitted to OAL 6-1-2000 and filed 7-11-2000 (Register 2000, No. 28).

§ 17947. Auditing.

(a) Will the Board audit my certifications?

The Board may audit your certifications. The Board may ask you for supporting documentation as described in Sections 17946 and 17946.5 of this Article.

(b) How will the Board request supporting documentation?

To obtain the information, the Board will mail a request to you. The Board will list the information it needs and explain why the Board needs the information. You will have 60 days following the postmarked date on the Board's request to supply the information.

(c) How will the Board conduct an audit?

If the Board decides to conduct an audit of your records to determine compliance with program requirements, the audit will be conducted based on information you provide to the Board. The Board may request supplemental information from you during the course of the audit, if necessary. The Board will mail you the results within 60 days of the date that the Board receives any supplemental information requested.

(d) What if I fail to provide requested information to the Board?

If you fail to provide the requested information in accordance with this Article, you may be subject to the fines and penalties set forth in Section 17949 of this Article.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42320 and 42321, Public Resources Code.

HISTORY

1. New section filed 11-4-94; operative 12-5-94 (Register 94, No. 44).

§ 17948. Proprietary Information.

(a) How will the Board handle confidentiality of information?

(1) Upon the request of a manufacturer or trade association, the Board shall not disclose information, required by Section 17948 as it read prior to January 1, 1997, related to individual manufacturers, to the extent that it may legally be withheld from disclosure. Information related to individual manufacturers may be withheld from disclosure:

(A) if it is found to contain proprietary information pursuant to Public Resources Code Section 42323;

(B) to the extent provided by Government Code Sections 6254(k) and 6255; and

(C) if it constitutes a trade secret as referenced in Public Resources Code Section 40062, Civil Code Section 3426 et seq., and Government Code Section 6254.7.

(2) If the Board receives a written request from a member of the public that the Board disclose data claimed to be trade secret, confidential or proprietary information, or if the Board, upon its own initiative, seeks to disclose such data, the Board shall inform the provider of the information in writing that disclosure of the data is sought, and that a determination is being made as to whether any or all of the information has been properly identified as trade secret, confidential or proprietary information.

(A) If the Board determines that the information is not trade secret, confidential or proprietary information, the Board shall notify the person who furnished the information by certified mail. The person who furnished the information shall have 30 days after receipt of this notice to provide the Board with a complete justification and statement of the grounds on which the trade secret, confidential or proprietary information claim is being made. The justification and statement shall be submitted to the Board by certified mail. The deadline for filing the justification may be extended by the Board upon a showing of good cause made prior to the deadline specified for its receipt.

1. The justification and statement submitted in support of a claim of trade secret, confidential or proprietary information shall include, but is not limited to, the following:

a. a specific description of the data claimed to be entitled to treatment as trade secret, confidential or proprietary information;

b. a statement as to whether it is asserted that the data is a trade secret, is confidential or proprietary information, that disclosure of the data would result in harmful effects on the person's competitive position, and if so, the nature and extent of such anticipated harmful effects;

c. any statutory or regulatory provisions under which the claim of trade secret, confidentiality or proprietary is asserted;

d. the period of time for which trade secret, confidential or proprietary treatment is requested;

e. the extent to which the data has been disclosed to others and whether its trade secret, confidential or proprietary status has been maintained or its release restricted;

f. trade secret, confidentiality or proprietary determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determination, if available.

2. Documentation in support of a claim of trade secret, confidential or proprietary information, as specified in subdivision 1. of this section, may be submitted to the Board prior to the time disclosure is sought.

(B) The Board shall determine whether the information is protected as trade secret, confidential or proprietary information within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the notice required by subdivision (A). The Board shall notify the person who furnished the information and any

party who has requested the information pursuant to a public records request of the determination, by certified mail.

(C) If the Board determines that the information is not protected as trade secret, confidential or proprietary information, the notice required by subdivision (B) shall also specify a date, not sooner than 15 days after the date of mailing of the notice, when the information shall be made available to the public.

(3) Except as provided in subdivisions (1) and (2), the Board may release information submitted and designated as trade secret, confidential or proprietary information to the following under the following conditions:

(A) Other governmental agencies, and the Legislature may receive information that has been compiled or aggregated from confidential information, but does not reveal the specific sources of the information, when the information has been requested in connection with a local enforcement agency's or the Board's responsibilities under this division or for use in making reports.

(B) To the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.

(4) Should judicial review be sought of a determination issued in accordance with section (2), either the person requesting the data or the person making the claim of trade secret, confidential or proprietary information status in relation to the data, may be made a party to the litigation to justify the determination.

NOTE: Authority cited: Section 6253, Government Code. Sections 40502 and 42325, Public Resources Code. Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. Change without regulatory effect amending section heading, repealing subsections (a)–(h)(2), relettering subsections, and amending newly designated subsection (a)(1) filed 3–24–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

§ 17948.5. Letters of Non–Objection.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310 and 42323, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
3. Change without regulatory effect repealing section filed 3–24–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

§ 17949. Violations and Penalties.

(a) What may result if I provide the Board with a false or misleading certification?

Pursuant to Public Resources Code 42322, within 30 days of the Board having made a determination that an entity provided the Board with a false or misleading certificate, the Board shall refer that entity to the Attorney General for prosecution for fraud.

(b) What may result if I do not comply with the program requirements?

Any violation is a public offense and is punishable by a fine not to exceed $100,000. In addition, violators may be subject to a civil penalty not to exceed $50,000 per violation. Total fines and penalties are not to exceed $100,000 per annum for each violator. Annually, on and after July 1, 1996, the Board shall publish a list of all violators of these requirements and the amount of the fines they were assessed.

(c) What are the penalties for not complying with program requirements?

Penalties for specified violations of program requirements follow.

Violation	*Description of Violation*	*Penalty*
(1) CCR Section 17944; *PRC* Section 42310	Product manufacturer did not comply with container requirements. Penalty determined by degree of noncompliance.	$5,000—$50,000 See Subsection (d).
(2) *CCR* Section 17946	Product manufacturer did not submit certification by due date.	$1,000—$50,000 See Subsection (e).
(3) *CCR* Section 17946	Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions; failure to account for all products; failure to account for subsidiaries and divisions; lack of container manufacturer's verification of number of containers sold or weight of containers; inconsistencies in information from product manufacturer and container manufacturer; lack of signatures; mathematical inaccuracies.	$1,000—$50,000
(4) *CCR* Section 17946; *PRC* Section 42321	Product manufacturer submitted false or misleading information on certification.	Referral to Attorney General for prosecution for fraud within 30 days of discovery by Board; maximum fine, $100,000.

(d) For violation (1) how will the degree of noncompliance be determined?

The degree of noncompliance will be determined according to the following point system where the amount of violation will be determined according to the following formula: $50,000 minus $1,800 times number of points or [$50,000—($1,800 x number of points)].

Rigid Plastic Packaging Container Compliance Point System

Points	*PC Resin (Percent PCR)*	*Source Reduction (Percent SR)*	*Reuse (Times)*	*Refill (Times)*
1	1	0.4	0.2	0.2
2	2	0.8	0.4	0.4
3	3	1.2	0.6	0.6
4	4	1.6	0.8	0.8
5	5	2	1	1
6	6	2.4	1.2	1.2
7	7	2.8	1.4	1.4
8	8	3.2	1.6	1.6
9	9	3.6	1.8	1.8
10	10	4	2	2
11	11	4.4	2.2	2.2
12	12	4.8	2.4	2.4
13	13	5.2	2.6	2.6
14	14	5.6	2.8	2.8
15	15	6	3	3
16	16	6.4	3.2	3.2
17	17	6.8	3.4	3.4
18	18	7.2	3.6	3.6
19	19	7.6	3.8	3.8

Points	*PC Resin (Percent PCR)*	*Source Reduction (Percent SR)*	*Reuse (Times)*	*Refill (Times)*
20	20	8	4	4
21	21	8.4	4.2	4.2
22	22	8.8	4.4	4.4
23	23	9.2	4.6	4.6
24	24	9.6	4.8	4.8
25	25	10	5	5
26	26	10.4		
27	27	10.8		
28	28	11.2		
29	29	11.6		
30	30	12		
31	31	12.4		
32	32	12.8		
33	33	13.2		
34	34	13.6		
35	35	14		
36	36	14.4		
37	37	14.8		
38	38	15.2		
39	39	15.6		
40	40	16		
41	41	16.4		
42	42	16.8		
43	43	17.2		
44	44	17.6		
45	45	18		
46	46	18.4		
47	47	18.8		
48	48	19.2		
49	49	19.6		
50	50	20		

(e) For violation (2), what criteria will be used to determine penalties for certifications submitted late?

Certifications submitted late will be assessed the following penalties:

Days Late	*Amount of Penalty*
1–30	$1,000
31–60	$5,000
More than 60	Up to $50,000
	(Considered nonresponsive)

(f) Are there mitigating factors that the Administrative Law Judge or Board may consider in reducing the penalty amount for any violation?

Yes. The Administrative Law Judge or the Board may consider, but is not limited to considering, evidence of the following, as provided by the product manufacturer:

1. Impact on diversion and sustainable markets.
2. Size of company.
3. Degree of cooperation or noncooperation, including documented efforts to obtain container manufacturer's documentation.
4. Technological feasibility of compliance.
5. History of previous compliance.

NOTE: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42321 and 42322, Public Resources Code.

HISTORY

1. New section filed 11–4–94; operative 12–5–94 (Register 94, No. 44).
2. Amendment of section heading, repealer of former subsections (c)–(e) and new subsections (c)–(f) filed 6–2–2003 as an emergency; operative 6–2–2003 (Register 2003, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–30–2003 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to 6–2–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 3).
4. Amendment of section heading, repealer of former subsections (c)–(e) and new subsections (c)–(f) filed 1–12–2004; operative 1–12–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 3).

Article 4. Recycled Content Newsprint

§ 17950. Regulatory Effect of Questions and Answers.

For the purposes of this Article, both the question and answer in each section have regulatory effect for implementation and enforcement. In addition to the regulations in this Article, statutory provisions contained in Sections 40502 and 42750 through 42791 of the Public Resources Code govern the Recycled–Content Newsprint Program.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42760, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).

§ 17952. Purpose and Definitions.

(a) What is the purpose of these regulations? These regulations explain what recycled–content newsprint requirements consumers and suppliers of newsprint must meet, and what procedures consumers and suppliers of newsprint must follow to report and certify recycled–content newsprint use. These regulations only pertain to newsprint use within the state of California.

(b) Definitions. Additional definitions may be found in Article 1, Chapter 15, Part 3 of Division 30 of the Public Resources Code.

(1) The *Board* is the California Integrated Waste Management Board.

(2) A *commercial printing and publishing operation* is a business located in California, which uses newsprint in its printing or publishing operation. A *commercial printer* is further defined as a person whose business is classified in the Standard Industrial Classifications Code (SIC), Sections 2752, 2754, or 2759, which are incorporated herein by reference. A *commercial publisher* is further defined as a person whose business is classified in the Standard Industrial Classifications Code (SIC), Sections 2711, 2721, 2731, or 2741, which are incorporated herein by reference.

(3) A *consumer of newsprint* means a person, as defined in Public Resources Code section 40170, who uses newsprint in a commercial printing or in a commercial publishing operation.

Public Resources Code 40170 defines "person" as individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(4) *Delivery time* is the time between placement of a newsprint order and receipt of that order by a consumer of newsprint.

(5) *Grade* is a class or level of quality of paper or pulp which is ranked, or distinguished from other papers or pulps, on the basis of its use, appearance, quality, manufacturing history, raw materials, or a combination of these factors. Some grades have been officially identified and described and thus are ranked. Others are commonly recognized but lack official definition.

(6) *Groundwood Pulp* means a material that is produced by taking debarked pulpwood, and forcing it against a revolving grindstone in the presence of water. The abrasive action of the stone reduces the wood to pulp. No chemicals are used in the production of groundwood except for possible bleaching.

(7) *Machine Finish* is any finish obtained on a paper machine. It may be that of a sheet of paper as it leaves the last drier or as it leaves the calendar stack. It may also be a dry or water finish. When used in conjunction with the name of a grade or type of paper, a machine finish has less than the maximum range of smoothness.

(8) *May* means a provision is permissive.

(9) A *metric ton* is 1000 kilograms. To convert pounds to metric tons, divide the number of pounds by 2,204.6.

(10) *Must* means a provision is mandatory.

(11) *Newsprint* means uncoated paper, whether supercalendered or machine finished, of the type generally used for, but is not limited to, the publication of newspapers, commercial advertising inserts, directories, or commercial advertising mailers, which is made primarily from mechanical woodpulps combined with some chemical woodpulp. "Newsprint" includes paper made from old newspapers, which have been deinked, using the recycled pulp in lieu of virgin pulp. "Newsprint" includes all grades of paper sold as newsprint, supercalendered (SC) uncoated groundwood, or machine finished (MF) uncoated groundwood.

Grades of newsprint may include, but are not limited to:

(1) Newspaper Newsprint: 52.1 g/m^2 through 45.0 g/m^2

(2) Lightweight Newsprint: 45.0 g/m^2 and lower

(3) Supercalendered and machine finished uncoated groundwood newsprint grades, as follows:

(a) Hi–Brite Newsprint: 48.8 g/m^2 and higher, brightness greater than 65%

(b) CPO Newsprint: 45.0 g/m^2 through 48.7 g/m^2 brightness greater than 65%

(c) Rotogravure Newsprint: 40.0 g/m^2 and higher, roughness less than 60 Sheffield.

(12) A *newsprint manufacturer* is in the business of making newsprint.

(13) A *newsprint supplier* is a broker, dealer, or seller of 5 metric tons or more of newsprint per year for use in California. Consumers who supply other consumers with newsprint are not considered suppliers for the purposes of this Article.

(14) *Quoted price* is defined as the actual purchase price for newsprint; i.e. the price agreed upon by the buyer and the seller, verbally or in writing, which would consummate a sale or purchase.

(15) *Recycled Content Newsprint* means newsprint in which not less than 40 percent of its fiber consists of postconsumer wastepaper.

(16) A *Reporting Period* is from January 1 through December 31 of any given year.

(17) A *shipment* is defined as any quantity of newsprint, regardless of mode of transportation, which is accompanied by an invoice, bill of lading, shipment order, purchase order, or other evidence of shipment. A physical record for every shipment must be received by the company using the newsprint in its commercial printing or publishing operation.

(18) *Supercalendered* is a finish obtained by passing paper between rolls of a supercalender under pressure. The resulting finish will vary depending upon the raw material used in the paper and the pressure exerted upon it, from that of the highest English finish to a highly glazed surface.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42750, 42753, 42754, 42755 and 42756, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code sections 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending subsections (b)(2), (b)(11) and (b)(11)(3) filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17954. Who Must Comply with These Regulations?

Who must comply with these regulations? You must comply with these regulations if you are:

1. A person, as defined by Public Resources Code section 40170, located in California, or
2. A newsprint supplier who is a person, as defined above, who supplies newsprint which will be used in California, or
3. A newsprint manufacturer who is a person, as defined above, who produces newsprint, which will be used in California.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42750, 42753 and 42772, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending item 3. filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17956. Who Must Certify?

These certification requirements apply to printers and publishers, located in California, who use newsprint in their operations. Printing or publishing operations located outside of California are not required to comply with these regulations.

(a) Printer/Publisher Certification of Recycled–Content Newsprint Use to the Board.

(1) If you own or operate a commercial printing establishment located in California, you must annually submit to the Board a completed form CIWMB 430 "Newsprint Consumer Certification" (11/00), which is incorporated herein by reference. (See Appendix A.) This form is due to the Board on March 1 of each year.

(2) If you own or operate a commercial publishing operation located in California, which also owns or operates a commercial printing operation, you must annually submit a completed Newsprint Consumer Certification, form CIWMB 430 (11/00), to the Board.

(3) Any person owning or operating more than one commercial printing or commercial publishing operation in California may submit one certification for all of its operations. All of the information required by Section 17958(b) of this Article must be itemized for each establishment included in the certification.

(4) If you own or operate a commercial printing operation located in California, but do not do any printing, you are not required to submit a Newsprint Consumer Certification, form CIWMB 430 (11/00), to the Board.

(b) Supplier Certification of Recycled–Content Newsprint to Consumers or other Suppliers.

If, at any time during a year, you supply recycled–content newsprint to commercial printers/publishers located in California, or to other suppliers who may in turn supply such establishments, you must comply with Section 17960 of this Article. Suppliers of newsprint are held accountable for certification according to Section 17960, regardless of their location.

(c) Manufacturer Certification of the Recycled–Content of its Newsprint to the Board.

If you are a person manufacturing recycled–content newsprint for use in California, you must submit a letter to the Board certifying the metric tons of postconsumer wastepaper and/or deinked pulp received or produced at each of your mills producing recycled–content newsprint for use in California during each reporting period. You must also certify to the Board the metric tons of recycled–content newsprint, by grade, which were produced at each of your mills that were shipped for use in California during each reporting period. This letter of certification will be due on March 1 of every year for each reporting period (January 1 through December 31).

(d) Manufacturer Certification of the Recycled–Content to Suppliers/Consumers.

If you are a person manufacturing recycled–content newsprint for use in California, you must certify that the newsprint you ship for use in California is recycled–content newsprint.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42753, 42772, 42773, 42774 and 42775, Public Resources Code.

History

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending subsections (a)(1), (2) and (4) filed 1–11–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 2).
3. Amendment of subsections (a)(1)–(2) and (a)(4) filed 1–16–96; operative 2–15–96 (Register 96, No. 3).
4. Change without regulatory effect amending subsections (a)(1)–(2) and (a)(4) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
5. Change without regulatory effect amending subsections (a)(1), (a)(2), and (a)(4) filed 6–6–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 23).
6. Change without regulatory effect amending subsections (a)(1), (a)(2), (a)(4) and (c) filed 9–14–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 38).
7. Change without regulatory effect amending section filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17958. Newsprint Consumer Requirements.

(a) I am a consumer of newsprint. What must I do to comply with these regulations? If you are a consumer of newsprint, to comply with these regulations you must:

1. Satisfy the minimum recycled–content newsprint use requirements in Table One below, and

2. Certify to the Board by March 1 of each year that you are meeting these requirements. The first certification is due to the Board by March 1, 1992 for 1991's use. Certification information is listed in subsection (b) of this section.

TABLE ONE: RECYCLED–CONTENT NEWSPRINT USE REQUIREMENTS

On and After	Required Use
January 1, 1991	25 percent
January 1, 1994	30 percent
January 1, 1996	35 percent
January 1, 1998	40 percent
January 1, 2000	50 percent

(b) I am a consumer of newsprint located in California. What information must I send to the Board each year for my certification? By March 1 of each year, you must send the following information to the Board on the Board–supplied Newsprint Consumer Certification Form #430 (11/00):

1. Your name, mailing address, physical address, and telephone number;

2. The total metric tons of newsprint not containing forty (40) percent postconsumer fibers used during the preceding calendar year; and

3. The total in metric tons of recycled–content newsprint used during the preceding calendar year;

(c) I am a consumer of newsprint. What records must I keep to comply with these regulations? To comply with these regulations, consumers of newsprint must keep:

1. A copy of every shipment order, bill of lading, invoice, purchase order, or other evidence of shipment,

2. A copy of the annual Newsprint Consumer Certification Form #430 (11/00), that you send to the Board, and

3. A copy of any supplier certification you have received.

(d) How long must consumers of newsprint keep the records required by these regulations? You must keep the records for 3 years after the date of the certification and make them available to the Board upon request.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42760, 42770 and 42782, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Amendment of subsection (b), repealer of subsection (b)(4) and amendment of subsection (c)(2) filed 1–16–96; operative 2–15–96 (Register 96, No. 3).
3. Change without regulatory effect amending subsections (b) and (c)2. filed 9–14–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 38).
4. Change without regulatory effect amending subsections (b), (b)2. (c) and (c)2. filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17960. Newsprint Supplier Requirements.

(a) I am a newsprint supplier. When I certify the metric tons of recycled–content newsprint in every shipment to a consumer or other supplier of newsprint, what information must I include? When you certify the metric tons of recycled–content newsprint in every shipment to a newsprint consumer or supplier, you must include:

1. Your name, mailing address, and telephone number,

2. The name and physical address of the consumer or supplier to whom you are sending the newsprint,

3. The name of the newsprint grade, and the date(s) of shipment,

4. Total in metric tons, by grade, of recycled–content newsprint shipped, and

5. Total in metric tons, by grade, of newsprint containing less than forty (40) percent postconsumer wastepaper shipped.

6. If a shipment contains no recycled–content newsprint, the supplier shall so certify.

(b) I am a newsprint supplier who has supplied consumers or other suppliers with recycled–content newsprint. What records must I keep to comply with these regulations? You must keep the following records for each shipment of newsprint you make to a consumer or other supplier of newsprint:

1. The manufacturer's name, address, and mill of production for each grade of newsprint received in each shipment,

2. The name and mailing address of the person from whom you received each shipment prior to your supplying it to others,

3. The name and mailing address of the consumer or supplier to whom you shipped the newsprint,

4. The name of the newsprint grade(s) supplied in each shipment, and the dates of shipment,

5. Total, in metric tons, of each grade of newsprint containing less than forty (40) percent postconsumer wastepaper contained in each shipment,

6. Total, in metric tons, of each grade of recycled–content newsprint contained in each shipment, and

7. Copies of any certifications you send to consumers of newsprint, or to other suppliers.

(c) As a newsprint supplier, how long must I keep the records required by these regulations? If you are a newsprint supplier, you must keep records for 3 years after the date of each certification and make them available to the Board upon request.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42772 and 42780, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending subsections (b)5.–7. filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17962. Newsprint Manufacturer Requirements.

(a) I manufacture recycled–content newsprint, which is used in California. What must I do to comply with these regulations? If you manufacture recycled–content newsprint, which is used in California, you must:

(1) Certify the metric tons of recycled–content newsprint contained in each shipment made to consumers or suppliers, by grade, for use in California. If a shipment contains no recycled–content newsprint, you shall so certify.

(2) Certify to the Board by March 1 of each year the metric tons of postconsumer waste paper and/or deinked pulp received or produced at each of your mills producing recycled–content newsprint for use in California during each reporting period.

(3) Certify to the Board by March 1 of each year the metric tons of recycled–content newsprint, by grade, which were produced at each of your mills, which were shipped for use in California, during each reporting period.

(b) As a manufacturer of recycled–content newsprint, what records must I keep to comply with these regulations? If you are a recycled–content newsprint manufacturer, you must keep copies of any certification you send to suppliers, consumers, or the Board.

(c) As a manufacturer of recycled–content newsprint, how long must I keep the records required by these regulations? You must keep the records for 3 years after the date of the certification and make them available to the Board upon request.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42772, 42780, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending subsections (a)–(a)(1) and (c) filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17964. Quality Standards.

(a) What quality standards does the recycled–content newsprint have to meet? The Board shall establish the comparable quality standards, which the recycled–content newsprint must meet.

(b) How will the Board set its comparable quality standards? In July of each year, the Board will survey newsprint manufacturers who annually sell more than 5,000 metric tons of recycled–content newsprint for use in California. The Board will request samples from each of these manufacturers for each grade of recycled–content newsprint that they produce.

The Board will then conduct testing following the methods of the Technical Association of the Pulp and Paper Industry (TAPPI), and will establish the standards based on the results of the testing. The TAPPI Test Methods T414, T452, and T425, 1986, are incorporated herein by reference, and listed in Table Two below. (See section (e) for additional information about the TAPPI methods).

TABLE TWO: TAPPI TEST METHODS

Specification	*Test Method*	*Units*
Average of all brightness tests	T452	Percent
Average of all opacity tests	T425	Percent
Average of all cross–machine tear strength tests	T414	Grams

(c) The Board will use the following method to calculate the comparable quality standard for each of the specifications in the newspaper news-

print and lightweight newsprint grades:

Sum of the test results from samples submitted by manufacturers	=	_____ (1)
Number of manufacturers submitting samples	=	_____ (2)
Divide (1) by (2)	=	_____ (3)
Multiply (3) by 0.98	=	_____ (4)

The figure on line (4) is the minimum comparable quality standard for these grades.

(d) The Board will use the following method to calculate the comparable quality standard for each of the specifications in the supercalendered and machine finished uncoated groundwood grades:

Sum of the test results from samples submitted by manufacturers	=	_____ (1)
Number of manufacturers submitting samples	=	_____ (2)
Divide (1) by (2)	=	_____ (3)
Multiply (3) by 1.00	=	_____ (4)

The figure on line (4) is the minimum comparable quality standard for these grades.

(e) Where can I find the TAPPI methods for sampling procedures, and the test methods for brightness, printing opacity and cross–machine tear strength? You can find the test methods (T414, T425, T452) in a book called *TAPPI Test Methods*, Volumes 1 and 2, 1986, published by the Technical Association of the Pulp and Paper Industry, P.O. Box 105113, Atlanta, Georgia, 30348. TAPPI methods can also be found in the Annual Book of the American Society of Testing Materials (ASTM) OM–87, Volume 15.09, 1988.

(f) When will the Board make available the comparable quality standards? The Board will make available the comparable quality standards by November 30 of each year.

(g) For what time period will these comparable quality standards apply? The comparable quality standards made available by November 30 of each year will apply throughout the following calendar year.

NOTE: Authority cited: Sections 40502 and 42775(a), Public Resources Code. Reference: Section 42775(a) and (b), Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending subsections (a)–(b) filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17966. Comparable Price.

How do I know if the price I have to pay for recycled–content newsprint is a comparable price? The price for a grade of recycled–content newsprint is comparable if the quoted price for the recycled–content newsprint is less than or equal to the quoted price for newsprint which is not recycled–content newsprint. These price comparisons shall be grade–specific and for similar quantities.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42760, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).

§ 17968. Availability Within a Reasonable Period of Time.

(a) How will I know if the delivery time promised by a newsprint manufacturer or supplier for recycled–content newsprint is reasonable?

(1) A reasonable delivery time for recycled–content newsprint for a commercial publisher shall be forty–five (45) calendar days.

(2) A reasonable delivery time for recycled–content newsprint for a commercial printer shall be calculated by adding the delivery times in days for all deliveries of newsprint of that grade received by the printer in the prior 30 days, dividing the result by the number of deliveries, and multiplying this result by 1.1. If the quoted delivery time is less than or equal to the final result of your calculation, the quoted delivery time is reasonable.

(b) What if I have not received a shipment of that grade of newsprint in the previous 30 days? If you have not received a shipment of that grade of newsprint within the last 30 days, add all the delivery times for the last 90 days for the calculation. If you have not received a shipment in the last 90 days, substitute delivery times of a comparable grade of newsprint and complete the calculation.

(c) What if I have never received a shipment of that grade of newsprint or any comparable grades? If you have never received a shipment of that grade or any grade comparable, the recycled–content newsprint shall be considered available within a reasonable period of time if the quoted delivery time does not prevent you from performing the job for which you need the newsprint.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42760, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).

§ 17970. Auditing.

(a) Will the Board conduct audits of my certifications? The Board may conduct audits of your certifications. The Board may either ask you for additional information, or the Board may conduct an on–site audit.

(b) How will the Board conduct a request for additional information? To get the information, the Board will send you a request by certified mail. The Board will list the information the Board needs and explain why the Board needs the information. You will have thirty days to supply the information.

(c) How will the Board conduct an on–site audit? If the Board decides to audit your records to determine compliance with the statutory requirements, either Board staff or an auditor will conduct the audit. The Board will send you the results within thirty days of the date on which the audit was performed.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42771, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).

§ 17972. Failure to Meet Goals.

(a) I am a consumer of newsprint. What happens if I cannot meet the recycled–content newsprint use requirements for any reporting period? If you cannot meet the recycled–content newsprint use requirements for any reporting period, you must give the specific reasons why you did not meet them when you file your certification for that reporting period.

There are only three acceptable reasons, pursuant to Public Resources Code section 42773, for not meeting the recycled–content newsprint use requirements:

1. The recycled–content newsprint did not meet the quality standards established by the Board as defined in Section 17964 of this Article;

2. The recycled–content newsprint was not available at a comparable price, as defined in Section 17966 of this Article, to that for newsprint which is not recycled–content newsprint; or

3. The particular grade of recycled–content newsprint would not have been available in a reasonable time as defined in Section 17968 of this Article.

(b) I was not able to meet the recycled–content newsprint use requirements for a reporting period. In my certification, I am going to use one of the reasons listed above to explain why I did not meet the requirements for recycled–content newsprint use. What steps do I have to take to make this certification in good faith? To make this certification in good faith, you must provide documentation, as described in Public Resources Code section 42773, showing that you contacted newsprint suppliers for the purpose of obtaining recycled–content newsprint. You must list all newsprint suppliers with whom you had purchase discussions, or producers that offered to sell you recycled–content newsprint within the preceding twelve months, on the Board supplied Newsprint Consumer Certification Form #430 (11/00).

(c) I was not able to meet the recycled–content newsprint use requirements for a reporting period. What records do I have to keep to document my claim?

1. If you claim that you did not meet the recycled–content newsprint use requirements because recycled–content newsprint was not available at a comparable price to newsprint which is not recycled–content newsprint, you must keep invoices for the newsprint you purchased for your use and copies of the quoted prices which you received for recycled–content newsprint during that particular reporting period.

2. If you claim that you did not meet the recycled–content newsprint use requirements because the recycled–content newsprint did not meet the comparable quality standards during a particular reporting period, it is your responsibility to document your claim. Examples of documentation include, but are not limited to:

(i) Technical specifications or a letter of certification from the manufacturer of that newsprint demonstrating that the newsprint does not meet the quality standards, or

(ii) A letter of notification to the Board within two days of the date you conclude that the use requirements will not be met. The Board may conduct TAPPI tests, identified in section 17964—Table Two of this Article, to assist you in substantiating your claim. If testing is required, the Board shall inform you of proper shipping and handling procedures for the samples based on the provisions of the particular test to be used.

3. If you are a commercial publisher, and you claim that a grade of recycled–content newsprint was not available within a reasonable period of time during a particular reporting period, you must keep copies of the quoted delivery times which you are claiming were unreasonable.

If you are a commercial printer, and you claim that a grade of recycled–content newsprint was not available within a reasonable period of time during a particular reporting period, you must keep copies of the calculations used to establish your reasonable delivery time for that grade of newsprint and the quoted delivery times which you are claiming were unreasonable.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 42760 and 42773, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Amendment of subsection (b) filed 1–16–96; operative 2–15–96 (Register 96, No. 3).
3. Change without regulatory effect amending subsection (b) filed 9–14–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 38).
4. Change without regulatory effect amending subsections (a)2., (b) and (c)–(c)1. filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17974. Penalties.

What can happen to me if I make a false or misleading certification or I do not comply with the statutory requirements?

(a) Any person who does not comply with the statutory requirements for this program may be found guilty of an infraction, and/or may be subject to civil penalties. The Board may assess civil penalties of up to $1,000 per violation, subject to notice and hearing.

(b) Late filers and non–filers of Newsprint Consumer Certifications (Form 430) shall be subject to the graduated penalty structure below:

1. Any Consumer of Newsprint who files a certification at least 45 days late will be assessed a $500 civil penalty.

2. Any Consumer of Newsprint who files a certification more than 90 days late and/or fails to file will be assessed a $1,000 civil penalty.

(c) Any civil penalties assessed against a late or non–filer of the Form 430 shall be assessed by the Executive Director.

(d) A Consumer of Newsprint may appeal the penalty assessed above to the full Board within ten (10) working days of receipt of the Notice of Penalty. This appeal must be made in writing and must be addressed to the Executive Director of the Board. The Executive Director shall calendar the appeal for hearing by the Board within thirty (30) days of receipt of the written notification by the Consumer of Newsprint.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 42790 and 42791, Public Resources Code.

HISTORY

1. New section filed 4–7–92; operative 4–7–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 18).
2. Change without regulatory effect amending form filed 1–11–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 2).
3. Amendment of forms filed 1–16–96; operative 2–15–96 (Register 96, No. 3).
4. Change without regulatory effect moving form to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
5. Amendment filed 12–22–99; operative 1–21–2000 (Register 99, No. 52).

Article 5. Recycled Content Trash Bag Program

§ 17975. Regulatory Effect of Questions and Answers.

(a) What is the regulatory effect of the questions and answer format? Both the question and answer in each section have regulatory effect for purposes of implementation and enforcement. In addition to the regulations in this Article, statutory provisions contained in Sections 42290 through 42297 of the Public Resources Code (PRC) govern the Recycled Content Trash Bag Program.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Section 42291, Public Resources Code.

HISTORY

1. New article 5 and section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of section and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).

§ 17976. Purpose and Definitions.

(a) What is the purpose of these regulations? These regulations explain the requirements for each manufacturer and wholesaler of trash bags and each supplier of recycled plastic postconsumer material (RPPCM) which is used to manufacture trash bags which are intended for sale or distribution in California. Also included are procedures manufacturers and wholesalers of trash bags and suppliers of recycled plastic postconsumer material (RPPCM) must follow to meet reporting and certification requirements. These regulations pertain to plastic trash bags which are intended for sale or distribution, or which are sold within California to recycled plastic postconsumer material (RPPCM) used to manufacture plastic trash bags which are sold or intended for sale or distribution in California and other plastic products manufactured by a plastic trash bag manufacturer intended for sale in California.

(b) Definitions. The following definitions, and the definitions found in Public Resources Code section 42290 apply to the regulations in this Article.

(1) "Actual postconsumer material (APCM)" means the weight, in pounds, of the postconsumer material used in a feedstock to manufacture trash bags. For example, the weight of actual postconsumer material in 1000 pounds of 100% postconsumer material feedstock would be 1000 pounds. However, the weight of APCM in 1000 pounds of resin blended from 70% postconsumer material and 30% non–postconsumer material would be 700 pounds (1000 x 0.70 = 700).

(2) "Annual aggregate use" is the sum of all actual postconsumer material (APCM) used to manufacture plastic products, either just the plastic trash bags or all of a manufacturer's plastic products that are used as a basis for compliance pursuant to section 17979. For example, if the manufacturer chooses section 17979(a)(1)(A)1 to show compliance, and if 10 million pounds of regulated trash bags are intended for sale in California, at least 1 million pounds APCM must be used to manufacture plastic trash bags intended for sale in California during that reporting period. Furthermore, the APCM may be used in some plastic trash bags and not in others so long as the cumulative use of APCM in plastic trash bags intended for sale in California exceeds 1 million pounds for the reporting period. If the manufacturer uses section 17979(a)(1)(A)2 to show compliance and 10 million pounds of regulated trash bags and 90 million pounds of other plastic products were manufactured and intended for sale in California, at least 30 million pounds (0.30 x (10+90) = 30) APCM

must be used to manufacture all of those products during that reporting period.

(3) "Authorized certification signature" means the signature of any one of the following persons who has been designated by the entity to sign a certification on its behalf:

For a corporation—A responsible corporate officer or manager authorized to make management decisions which govern the operation of the certifying facility.

For a partnership or sole proprietorship—The general partner or sole proprietor.

For a government agency—Either the principal executive officer or a designated elected official who is authorized to obligate the entity for purposes of this certification.

(4) "The Board" means the California Integrated Waste Management Board.

(5) "Manufacturer" means a person who manufacturers plastic trash bags for sale in this state. This includes persons who produce plastic trash bags or convert plastic film into trash bags for sale in this state.

(6) "May" means a provision is permissive.

(7) "Must" means a provision is mandatory.

(8) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can–liner bags, kitchen bags, compactor bags, and recycling bags.

A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.

A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:

(a) "Hazardous waste," as defined in Section 25117 of the Health and Safety Code.

(b) "Medical waste," as defined in Section 25023.2 of the Health and Safety Code.

(9) "Postconsumer material" means a finished product which would normally be disposed of as a solid waste, having completed its intended end–use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(10) "Proximate prior usage" means the collected finished product which the postconsumer material was derived from prior to its being processed into recycled plastic postconsumer material for use in a recycled content trash bag. For example, the proximate prior usage of the postconsumer material may have been, dry–cleaner bags, grocery or produce bags, agricultural film, or stretch wrap.

(11) "Recycled plastic postconsumer material (RPPCM)" means a plastic feedstock which is used to manufacture trash bags which contain postconsumer material. RPPCM may contain any amount (1–100%) of postconsumer material; however, compliance will be determined based on the APCM content of the trash bags.

(12) "Regulated bags" means plastic trash bags, as defined, intended for sale in California, which are at or above 0.70 mil thickness.

(13) "Reporting Period" is from January 1 through December 31 of any calendar year.

(14) A "shipment" is defined as any quantity of trash bags or recycled plastic postconsumer material, regardless of mode of transportation, which is accompanied by an invoice, bill of lading, shipment order, or other evidence of shipment.

(15) A "Supplier" means any person who provides recycled plastic postconsumer material (RPPCM) to a manufacturer of plastic trash bags.

(16) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state. This includes all persons who sell or resell regulated plastic trash bags to retailers, distributors, commercial or industrial users, or governmental entities in California.

NOTE: Authority cited: Section 40502 and 42297, Public Resources Code. Reference: Sections 42290 and 42291, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of section and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17977. Who Must Comply With These Regulations?

(a) Who must comply with these regulations? You must comply with these regulations if you are:

(1) A manufacturer or wholesaler of regulated trash bags, or

(2) A supplier of RPPCM who sells material to a manufacturer of regulated trash bags.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292, 42293 and 42294, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsections (a)(1)–(2) and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending subsection (a)(2) filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17978. Who Must Certify?

Trash bag manufacturers and wholesalers of trash bags must certify annually to the Board on Board–supplied form CIWMB 57 "Plastic Trash Bag Manufacturer Certification" and form CIWMB #58 "Plastic Trash Bag Wholesaler Certification", respectively, which are described in Sections 17979 and 17979.5, and which are incorporated herein by reference. Suppliers of RPPCM must certify annually to the regulated trash bag manufacturers to whom they sell material. The supplier certification form will not be provided by the Board.

(a) Annual Aggregate Certification Requirements for Manufacturers of Trash Bags—

If you are a manufacturer of regulated trash bags, you must comply with the requirements described in Public Resources Code (PRC) sections 42291, 42292 and 42293. You must annually submit to the Board a completed Trash Bag Manufacturer Certification Form #57 on or before March 1 (to cover the preceding reporting period) of each year.

(b) Certification Requirements for Wholesalers of Trash Bags—

If you are a wholesaler of trash bags, you must comply with the requirements described in PRC section 42294. You must annually submit to the Board a completed Wholesaler of Trash Bag Certification Form #58 on or before March 1 (to cover the preceding reporting period) of each year.

(c) Certification Requirements for Suppliers of RPPCM—

If you are a supplier of RPPCM who sells material to a manufacturer of regulated trash bags, you must annually provide each manufacturer with the information described in PRC section 42292 and in Section 17980 of this Article. This report is due to each regulated trash bag manufacturer to whom you supplied RPPCM by February 1, (to cover the preceding reporting period) of each year.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292 and 42293, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of first paragraph and subsection (a), new subsection (b), subsection relettering, and amendment of newly designated subsection (c) and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending first paragraph filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
4. Change without regulatory effect amending section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17979. Requirements for Manufacturers of Regulated Trash Bags.

(a) Manufacturers of Regulated Trash Bags—

(1) I am a manufacturer of regulated trash bags. What must I do to comply with these regulations? To comply with these regulations, you must:

(A) Certify to the Board by March 1 of each year one of the following:

1. That you met the annual aggregate use requirements that plastic trash bags intended for sale in California contained APCM equal to at least 10 percent by weight of the regulated trash bags.

2. That you met the annual aggregate use requirement that 30 percent of the weight of the material used in all of your plastic products intended for sale in California is APCM.

3. Were exempt from meeting the requirements because all of the regulated trash bags you sold in California during the previous reporting period were either:

i. below the minimum gauge standard, or were

ii. hazardous or medical waste bags, or were

iii. non–plastic trash bags.

(B) Provide information upon request to anyone who purchases your trash bags and who must comply with these regulations, that will enable the purchaser to fulfill its certification requirements.

(C) Inform suppliers of RPPCM that the RPPCM being purchased will be reported on a certification to the Board in compliance with these regulations.

(2) I am a manufacturer of regulated trash bags. What information must I send to the Board each year in my certification?

On or before March 1 of each year you must send the following information to the Board for the preceding reporting period in your Trash Bag Manufacturer Certification Form #57:

(A) Identification—

Your company name, headquarters mailing address, every physical address where regulated trash bags were manufactured, contact person, and telephone number.

(B) Certification Information—

1. Total number of plastic trash bags intended for sale in California,

2. Total tons of plastic trash bags intended for sale in California,

3. Total tons of actual postconsumer material used to manufacture all plastic trash bags intended for sale in California, if claiming compliance through section 17979(a)(1)(A)1,

4. Total number of regulated trash bags intended for sale in California,

5. Total tons of regulated trash bags intended for sale in California, if claiming compliance through section 17979(a)(1)(A)1,

6. Total tons of material used to manufacture all plastic products intended for sale in California, if claiming compliance through section 17979(a)(1)(A)2,

7. Total tons of APCM used to manufacture all plastic products intended for sale in California, if claiming compliance through section 17979(a)(1)(A)2,

8. A description of any minimum recycled content mandate(s) of any other local, state, or federal government agencies with which you are required to comply, and the total tons of APCM used to comply with these mandates.

9. The number of regulated trash bags and the tons of regulated trash bags which originated from each physical location from which the manufacturer shipped regulated trash bags,

10. If you produce your own RPPCM, total tons of RPPCM produced during the reporting period, and, for each location where RPPCM is produced: tons of RPPCM, APCM content of RPPCM, and proximate prior usage of APCM,

11. The name and physical location of each supplier of RPPCM,

12. The quantity and proximate prior usage of, and the actual postconsumer material content of, RPPCM purchased for use in regulated trash bags, and

13. A list of any company(ies) to whom you sold RPPCM during the previous reporting period.

(C) Accompanying Documentation

Accompanying documentation, such as, results of an independent audit or certification program regarding your regulated trash bags or the RPPCM you purchased, may be attached.

(D) If applicable — Manufacturer's Justification of Non–compliance

If a manufacturer of regulated trash bags is unable to obtain sufficient amounts of RPPCM because the material did not meet the quality standards established by the Board or the RPPCM was not available within a reasonable period of time, the manufacturer shall so certify. The information required to make such claims is identified in Sections 17980.5, 17981, 17982 and/or 17983, and 17983.5 of this Article, as applicable.

Additional recordkeeping requirements regarding such claims are in Sections 17982 and/or 17983 of this Article.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42291, 42292 and 42293, 42298, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of section heading, section and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending subsection (a)(1)(A)1. Table One and NOTE filed 5–17–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).
4. Change without regulatory effect amending section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
5. Change without regulatory effect amending subsections (a)(2), (a)(2)(B)10. and (a)(2)(B)12. filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).
6. Change without regulatory effect amending subsections (a)(1)(A)2. and (a)(2)(B)13. filed 2–4–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 6).

§ 17979.1. Recycled Plastic Postconsumer Material That Cannot Be Used for Compliance.

Any certification of RPPCM used for compliance with these requirements shall not include any materials that are certified or used for compliance with any other California or federal requirement that requires the use or reporting of RPPCM for plastic products.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Section 42290.5, Public Resources Code.

HISTORY

1. Change without regulatory effect adding new section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
2. Change without regulatory effect amending section heading filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17979.3. Exemption For Trash Bags Using Adhesive, Heat Affixed Straps; Petition for Variance.

NOTE: Authority cited: Sections 40502, 42297 Public Resources Code. Reference: Section 42298, Public Resources Code.

HISTORY

1. Change without regulatory effect adding new section filed 5–17–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).
2. Amendment filed 5–15–97; operative 5–15–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 20).
3. Change without regulatory effect repealing section filed filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17979.5. Requirements for Wholesalers of Regulated Trash Bags.

(a) Wholesalers of Regulated Trash Bags — Wholesalers of regulated trash bags who are not also manufacturers of trash bags shall be guided by the following provisions:

(1) I am a wholesaler of regulated trash bags who is not also a manufacturer of trash bags. What information must I send to the Board each year in my certification? On or before March 1 of each year, you must send the following information to the Board for the preceding reporting period on your Trash Bag Wholesaler Certification Form #58:

(A) Your company name, headquarters mailing address, every physical address from which regulated trash bags were shipped, telephone number, and contact person,

(B) A list of each manufacturer and each other wholesaler from whom you purchased regulated trash bags during the previous reporting period, and,

(C) The number of regulated trash bags and the tons of regulated trash bags shipped from each physical location which were intended for sale or distribution or sold in California for which you are certifying.

(2) I am a wholesaler of regulated trash bags who is not also a manufacturer of regulated trash bags. Must I provide information to other wholesalers regarding the trash bags I sell? Yes, you must provide information upon request to any wholesaler to whom you sell regulated trash bags and who must comply with these regulations. The information must enable the wholesaler to fulfill its certification requirements.

(A) You must also inform manufacturers and wholesaler of regulated trash bags that the trash bags being purchased will be reported on a certification to the Board in compliance with these regulations.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292, 42293 and 42294, Public Resources Code.

HISTORY

1. New section filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
2. Change without regulatory effect amending subsection (a)(1) filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17980. Requirements for Suppliers of Recycled Plastic Postconsumer Material (RPPCM) for Use in Regulated Trash Bags.

(a) I am a supplier of RPPCM who has sold material to a manufacturer of regulated trash bags who is required to comply with these regulations. What must I do to comply with these regulations?

To comply with these regulations you must:

Provide each regulated trash bag manufacturer with a statement identifying:

(1) the quantity and proximate prior usage of RPPCM sold for use in the regulated trash bags sold to the manufacturer,

(2) the actual postconsumer material (APCM) content of RPPCM sold for use in the regulated trash bags sold to the manufacturer, and

(3) any other information required of the manufacturer by the Board for the purposes of inclusion in the annual certification to the Board.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42292 and 42293, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of section heading, subsection (a) and NOTE, repealer of subsections (a)(1)–(4), and new subsections (a)(1)–(3) filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section heading and section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17980.5. What If I Determine During A Reporting Period That I Cannot Meet The Recycled Plastic Postconsumer Material (RPPCM) Content Requirements?

(a) I am a manufacturer of regulated trash bags. Will the Board provide me with any assistance if I determine, during a reporting period, that I may not or cannot meet the RPPCM content requirement? If at any time during a reporting period, you determine you may not meet the RPPCM content requirement, you must contact the Board within ten (10) calendar days of making the determination. The Board will supply you with information regarding additional suppliers of RPPCM. Following receipt of the information from the Board, you are required to make a good–faith effort to purchase RPPCM to meet the use requirement from each supplier on the Board–provided list. A good–faith effort must be made with each supplier on the Board's list, in addition to those suppliers you have done business with or are otherwise aware of prior to making the certification in Section 17981.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292 and 42293, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of section and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section heading and section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17981. Failure To Meet Recycled Plastic Postconsumer Material (RPPCM) Content Requirements.

(a) I am a manufacturer of regulated trash bags. What must I do if I do not meet the regulatory requirements for any reporting period? If you are unable to obtain sufficient amounts of RPPCM within any reporting period because (1) it did not meet the RPPCM quality standards promulgated by the Board or (2) it was not available within a reasonable period of time, you must certify that fact to the Board.

(b) Must I provide documentation if I am requesting an exemption due to the lack of availability or due to the low quality of RPPCM? Yes, required documentation to support as claim for a quality exemption may be found in Section 17982(f) and required documentation to support a claim for an availability exemption may be found in Section 17983(b).

(c) Must records be kept to document a claim? Yes, records must be kept to assist you in documenting your certification. (See Section 17983.5 of this Article).

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292 and 42293, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsection (a), new subsection (b), subsection relettering, and amendment of newly designated subsection (c) and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section heading and section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17982. Minimum Recycled Plastic Postconsumer Material (RPPCM) Quality Standards.

(a) What are the Board's minimum recycled plastic postconsumer material quality standards for regulated trash bags? The following recycled postconsumer plastic material quality standards have been developed by the Board for regulated trash bags. The Board will make available the quality standards by December 31 of each year and they will apply for a maximum of two years. The test methods to be used by the Board to determine whether the standards are being met are included with each characteristic, whenever applicable. These minimum specifications are for the plastic RPPCM blended with a minimum of thirty percent (30%) APCM.

(1)	Moisture:	750 parts per million (ppm) maximum.
	Test Method:	ASTM D–4019–88 or equivalent method.
(2)	Contamination:	A specification mutually agreed upon by the trash bag manufacturer and supplier of RPPCM.
	Test Method:	A test method mutually agreed upon by the trash bag manufacturer and supplier of RPPCM.
(3)	Pellet uniformity:	The total number of pellets in a one gram sample must not vary more than ten percent (+/– 10%) from the average number for five samples.
	Test Method:	A simple count.
(4)	Specific gravity:	Resin must be within one percent (+/– 1%) of a specific gravity mutually agreed upon by the trash bag manufacturer and resin manufacturer.
	Test method:	ASTM D–792–91, ASTM D–1505–90 or equivalent.

(5) Melt Index: HDPE base resin – 0.25–0.85
LDPE base resin – 0.25–2.5
LLDPE base resin – 0.5–2.5, and
the melt index must not vary by more than fifteen percent (+/– 15%) within a shipment, and it must be within thirty percent (+/– 30%) from shipment to shipment over the length of the contract.

Test method: ASTM D–1238–88, or equivalent.

The ASTM test methods D–4019–88: Standard Test Method for Moisture in Plastics By Coulometry, D–792–91: Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics By Displacement, D–1505–90: Standard Test methods for Density of Plastics by the Density–Gradient Technique, D–1238–88: Standard Test methods for Flow Rates of Thermoplastics by Extrusion Plastometer are incorporated herein by reference.

(b) Where can I find the ASTM test methods? You can find ASTM test methods in the annually updated book called Annual Book of ASTM Standards, (ASTM) Section 8, Volume 08.01, published by the American Society for Testing and Materials, 1919 Race Street, Philadelphia, PA 19103–1187, the noted sections of which are herein incorporated by reference. All ASTM tests must be performed with the most recently approved methods. The non–ASTM test methods have yet to be standardized or are self–evident.

(c) What if a mutually agreeable specification cannot be reached between buyer and seller of the RPPCM? If a mutually agreed upon specification cannot be reached in good faith, the trash bag manufacturer must purchase and use RPPCM which meets any past or present specification for RPPCM that the manufacturer has previously used to purchase material.

(d) What if an equivalent test method is mutually agreed upon between buyer and seller of RPPCM and the RPPCM for sale does not pass the test? As long as the equivalent test method was mutually agreed upon by buyer and seller, an exemption claim based upon the failure to purchase the material will be accepted and evaluated by Board staff. If, however, an equivalent lest method is not agreed upon, or problems arise with the test method after an agreement is reached, a trash bag manufacturer may not make a certification pursuant to Section 17981 based on the failure to purchase the material for which the test method was inadequate.

(e) What if a trash bag manufacturer produces its own RPPCM? If a trash bag manufacturer produces enough RPPCM to meet the RPPCM use requirement, the manufacturer may not claim an exemption. If, however, the manufacturer can produce only a portion of the RPPCM it needs to comply with the requirements of this program, the manufacturer may file a request for a exemption if the failure to meet the use requirement was due to the quality or availability of the RPPCM offered for sale.

(f) I wish to certify that I was not able to meet the regulatory requirements because the RPPCM available to me did not meet the Board's quality standards. What must I do to make this certification? For each shipment or sample of RPPCM you rejected or refused to purchase on the basis that it did not meet the Board's minimum RPPCM quality standards, it is your responsibility to document your claim. Required documentation includes all of the following, but is not solely limited to these items:

(1) The list of the suppliers of RPPCM with whom you had purchase discussions after you realized that you might not meet the regulatory requirements,

(2) Any and all specifications and test methods which were mutually agreed upon between you and your RPPCM suppliers,

(3) Independent test results, product specifications, a letter of certification, or other documentation from each supplier of RPPCM you rejected or refused to purchase on the basis that it did not meet the Board's minimum RPPCM quality standards, demonstrating that the material does not meet the quality standards,

(4) Performance of ASTM tests, identified in Section 17982(a) of this Article, may be conducted by the Board to assist you in substantiating your claim. If testing is to be done, the Board shall inform you of proper shipping and handling procedures for samples based on the provisions of the particular test to be used,

(5) A written explanation describing the circumstances leading to your decision to reject or refuse to purchase every sample or shipment of rejected or refused RPPCM, and,

(6) A written explanation from the supplier of any sample or shipment of RPPCM describing the quality of the particular material which was rejected or refused by you.

(g) Will the Board periodically review its RPPCM quality standards? Yes, the Board will review its RPPCM quality standards whenever the Board determines it is necessary. The standards will be reviewed at least once every two years until the year 2000.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42291, 42295 and 42297, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsections (a)–(a)(2) and (a)(4)–(b), new subsections (c)–(e), subsection relettering, and amendment of newly designated subsections (f)–(g) and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section heading and section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 17983. Availability Within a Reasonable Period of Time.

(a) What is a reasonable period of time for shipment of RPPCM? The RPPCM shall be considered available within a reasonable period of time if the quoted shipment time will not prevent you from manufacturing the regulated trash bags with RPPCM or the shipment of RPPCM will arrive within sixty (60) days of the RPPCM order date.

(b) I must certify that I was not able to meet the regulatory requirements because RPPCM was not available to me within a reasonable period of time. What records must I keep to document my certification? If you claim that you did not meet the regulatory requirements because RPPCM was not available within a reasonable period of time, it is your responsibility to document each claim. Required documentation for each claim includes, but is not limited to, all of the following:

(1) Copies of your production schedule indicating the date the RPPCM was needed to maintain your production of regulated trash bags,

(2) The quoted shipment times that you are claiming were unreasonable, order date, and quoted delivery date,

(3) RPPCM storage inventory at the regulated trash bag manufacturing facility where the material was to be shipped indicating the material was not otherwise available,

(4) The volume of RPPCM requested in the order,

(5) A written explanation describing the circumstances contributing to your need to claim an exemption based on the availability of RPPCM,

(6) A written explanation from the supplier of RPPCM describing the availability of the particular material at the time of your negotiations, and,

(7) Additional facts to substantiate that the volume ordered and the timeframe for delivery that were requested were reasonable under normal business practices.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42291, 42295 and 42297, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsections (b) and (b)(4), new subsections (b)(5)–(6), subsection renumbering, and amendment of NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

4. Change without regulatory effect amending subsection (b)(2) filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17983.5. Recordkeeping Requirements.

(a) I am a manufacturer or wholesaler of regulated trash bags. What records must I keep to comply with these regulations? To comply with these regulations, you must keep:

(1) A copy or record of every shipment order, bill of lading, or other evidence of shipment of regulated trash bags you sold to a retailer, distributor, wholesaler, broker, commercial or industrial user, or governmental entity,

(2) A copy or record of every shipment order, bill of lading, or other evidence of shipment of regulated trash bags you purchased from a manufacturer or wholesaler of trash bags,

(3) A copy or record of every shipment order, bill of lading, or other evidence of shipment of RPPCM you purchased or that you sold to another trash bag manufacturer which identifies the APCM contained in the RPPCM,

(4) A copy or record of any documentation you are using to verify a claim for an exemption based upon your assertion that the RPPCM did not meet the quality standards or was not available within a reasonable period of time,

(5) A copy of every annual Certification Form #57 or #58 sent to the Board,

(6) A copy of every certification, or other legal document, required by other local, state, or federal government agencies to satisfy minimum recycled content mandates for trash bags or other plastic products,

(7) A certification, or other legal document, with an authorized certification signature, as defined in Section 17976(b)(3) of this Article from each supplier of postconsumer material identifying the material as postconsumer material as defined by PRC section 41970(c), and the quantity purchased during the preceding calendar year.

(8) A copy of each statement received from a supplier of RPPCM identifying the quantity and proximate prior usage of, and the actual postconsumer material content of each shipment of RPPCM purchased and any other information the Board requires for purposes of inclusion in the annual certification, and,

(9) Any mutually agreed upon quality standard or delivery time for RPPCM.

(b) I am a supplier of RPPCM. What records must I keep to comply with these regulations? To comply with these regulations, you must keep:

(1) A copy or record of every shipment order, bill of lading, or other evidence of shipment of RPPCM you sold to a manufacturer of regulated trash bags,

(2) A copy or record of every shipment order, bill of lading, or other evidence of shipment of postconsumer material obtained from a hauler, collector, other RPPCM supplier, or collection program.

(3) A certification, or other legal document, signed by a person of authority, from each supplier of postconsumer material identifying the material as postconsumer material as defined by PRC section 41970(c).

(4) A copy of every annual Certification Form #57 or #58 sent to the Board, or other report or certification sent to a manufacturer of regulated trash bags, and,

(5) A copy of each statement required to accompany each type of RPPCM sold to a manufacturer of trash bags which identifies the quantity and proximate prior usage of, and the actual postconsumer material content of, each shipment of that RPPCM type and any other information the Board requires of suppliers for purposes of inclusion in the trash bag manufacturers annual certification.

(c) How long must I keep these records? All records must be kept for three (3) years after the date of certification. The records must be made available to the Board upon request.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Sections 42290, 42291, 42292, 42293 and 42295, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsections (a)–(a)(4), (a)(6)–(7), (b)–(b)(2), and (b)(4), new subsections (a)(8)–(9) and (b)(5), and amendment of NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect amending section filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Change without regulatory effect amending subsections (a)(5) and (b)(4) filed 11–17–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).

§ 17984. Auditing.

(a) Will the Board conduct audits related to my certifications? The Board may include audits related to your certifications. The Board may either request additional information, or the Board may conduct an on–site audit. Each manufacturer, wholesaler or supplier required to provide certification or any information pursuant to this chapter shall be subject to audit by the Board.

(b) How will the Board request additional information? The Board will send you a request for additional information by certified mail. The Board will list the information it needs and explain the need for the information. You will have thirty (30) days from the date of receipt of the request to supply the information.

(c) How will the Board conduct an on–site audit? If the Board decides to audit your records or facilities to determine compliance with the regulatory requirements, either Board staff or the Board's designee will conduct the audit.

NOTE: Authority cited: Sections 40502 and 42297, Public Resources Code. Reference: Section 42295, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsection (a) and NOTE filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).

§ 17985. Penalties.

(a) What may result if I provide the Board with a false or misleading certification? Any person who provides the Board with a false or misleading certification may be prosecuted for fraud by the Attorney General.

(b) What may result if I do not comply with the regulatory requirements? The Board shall publish a list of those not in compliance with the requirements of this Article. Manufacturers and wholesalers of regulated trash bags and suppliers of RPPCM who do not comply with these statutes or regulations may be referred to the Attorney General for prosecution.

NOTE: Authority cited: Sections 40502, 41955 and 42297, Public Resources Code. Reference: Section 42296 and 42297, Public Resources Code.

HISTORY

1. New section filed 3–9–94; operative 3–9–94 (Register 94, No. 10).
2. Amendment of subsection (b) and NOTE and new forms CIWMB #57 and #58 filed 3–24–95; operative 3–24–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 12).
3. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
4. Change without regulatory effect amending subsection (b) filed 3–11–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

Article 6. At–Store Recycling Program Recordkeeping, Reporting and Measurement

§ 17987. Scope.

These regulations provide guidance to stores subject to the requirements of the At–Store Recycling Program Law (Public Resources Code Sections 42250 et seq.). Under this law, stores, as defined, shall provide at–store recycling opportunities for plastic carryout bags provided to customers by the stores at the point–of–sale, and shall maintain records describing the collection, transport and recycling of plastic bags collected for a minimum of three years. These regulations are designed to clarify the recordkeeping requirements of the law.

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Section 42252, Public Resources Code.

HISTORY

1. New article 6 (sections 17987–17987.5) and section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.
2. New article 6 (sections 17987–17987.5) and section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New article 6 (sections 17987–17987.5) and section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

§ 17987.1. Applicability.

These regulations do not cover retail establishments that do not meet the definition of a store, nor bags that are not plastic carryout bags, as defined. The requirements of the At–Store Recycling Program Law apply only to stores as defined in this Article that provide plastic carryout bags to customers at the point–of–sale.

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Sections 42250, 42251 and 42252, Public Resources Code

HISTORY

1. New section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

§ 17987.2. Definitions.

The following definitions apply to the regulations in this Article.

(a) "Board" means the California Integrated Waste Management Board.

(b) "Co–Mingled Recycling Rate" means the percentage of plastic carryout bags recycled relative to other film plastic material recycled as determined by periodic waste characterization studies performed by or on behalf of the Board.

(c) "Compostable Carryout Bag" means a bag provided by a store to customers at the point–of–sale that meets the American Society of Testing and Material Standard D6400 for degradation through biological processes or degrades from the action of naturally occurring microorganisms including, but not limited to, bacteria, fungi and algae. This definition includes any bag labeled in compliance with Chapter 5.7 (commencing with Section 42355) of the Public Resources Code.

(d) "Designated Reporting Party or Parties" means a person authorized by an operator to maintain and report the records and data required by this Article. An operator may have more than one designated reporting party.

(e) "Local Jurisdiction" means a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state government.

(f) "Manufacturer" means the producer or generator of a plastic carryout bag sold to a store in California.

(g) "Measurement Period" means the twelve month period beginning on January 1 and ending December 31 of each calendar year.

(h) "Operator" means a person in control of, or having daily responsibility for, the daily operation of a store, as defined in this Article, which may include, but is not limited to, the owner, lessee, or franchisee. An operator may have control of more than one store.

(i) "Person" means any natural person, corporation, partnership, limited liability company, firm, association, or sole proprietorship.

(j) "Plastic Carryout Bag" means a plastic carryout bag provided by a store to a customer at the point of sale. A compostable carryout bag is not a plastic carryout bag for purposes of this Article.

(k) "Store" means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and that meets either of the following requirements:

(1) Meets the definition of a "supermarket" as found in this Article.

(2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley–Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(l) "Supermarket" means a full–line, self–service retail store with gross annual sales of at least two million dollars ($2,000,000), and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Sections 42250 and 42252, Public Resources Code.

HISTORY

1. New section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

§ 17987.3. Recordkeeping.

(a) Each operator or its designated reporting party or parties shall maintain the following records:

(1) A record of all shipments of plastic carryout bags to the store or stores.

(2) An operator or its designated reporting party or parties shall maintain one of the following types of records depending on whether it is reporting on the actual weight of plastic carryout bags or is reporting an estimated weight based on the co–mingled recycling rate:

(a) A record of the weight of all plastic carryout bags recycled or transported; or

(b) A record of the weight of all film plastic recycled or transported. This weight shall include all plastic carryout bags that are co–mingled with other types of film plastic.

(3) A copy of every form or report required to be filed with the Board.

(4) Operators or designated reporting parties using the co–mingled recycling rate shall maintain any records describing the calculation(s) of the weights of recycled plastic carryout bags and other film plastic materials.

(b) Each operator shall be responsible for maintaining the records required by this Article. An operator may allow its designated reporting party to maintain required records, but the operator shall ultimately be responsible for making all records available to the Board or local jurisdiction within 30 calendar days after receiving a written request. If records are made available for in–person inspection by the Board or a local jurisdiction, such records shall be made available during normal working hours.

(c) Each operator shall retain all required records for a minimum of three (3) years after the submission of an annual report required by this Article. If an operator is using a designated reporting party to maintain records, it shall ensure that the designated reporting party retains records for the minimum three (3) years. An operator, at its discretion, may ensure the record retention through a contract.

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Sections 42250 and 42252, Public Resources Code.

HISTORY

1. New section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

§ 17987.4. Filing of Annual Report.

(a) Each operator or designated reporting party shall submit the required information enumerated in this section to the Board no later than April 1 of each year for the previous measurement period.

(b) For the 2007 measurement period, operators or designated reporting parties shall be required to only report for the six–month period beginning July 1, 2007 and ending December 31, 2007. An operator or designated reporting party may report for a longer period during the 2007 calendar year at its discretion.

(c) An operator with multiple store locations may submit one annual report for all of its stores. A designated reporting party shall submit a separate form and data sheet for each operator.

(d) Notwithstanding sub–section (c), a designated reporting party who is reporting on behalf of twenty–five (25) or more operators may submit one annual report including the information required by the section for all of its operators. Designated reporting parties submitting an annual report in this manner shall report the information required by this section and shall include a listing of each operator's name, mailing address, telephone number and contact name.

(e) Each operator or its designated reporting party or parties shall report the following information to the Board. The co–mingled recycling rate may be utilized to calculate weights where applicable.

(1) The full and complete name of the designated reporting party if applicable.

(2) The mailing address of the designated reporting party if applicable.

(3) The contact name and telephone number for the designated reporting party if applicable.

(4) The full and complete name of the operator.

(5) The mailing address of the operator.

(6) The contact name and telephone number of the operator.

(7) The name of the store(s), if different from the name of the operator.

(8) The addresses of stores, distribution centers, warehouses or other locations where reported transactions occurred.

(9) The weight of plastic carryout bags purchased.

(10) The weight of plastic carryout bags collected and recycled or sent for recycling by the operator or designated reporting party or parties.

(11) The names and addresses of the recyclers utilized by the operator or designated reporting party or parties.

(f) The operator or its designated reporting party or parties shall submit a certification form or other declaration that the information was submitted under penalty of perjury, according to the following format:

"I certify under penalty of perjury under the laws of the State of California that the information and data contained herein are true and correct."

(Signature) (Date)

(g) An operator or designated reporting party may either directly report the weight of plastic carryout bags or film plastic materials recycled by the operator's store or stores by use of the co–mingled recycling rate. If the co–mingled recycling rate is used by an operator or designated reporting party to calculate the weight of plastic carryout bags and other film plastic materials that was recycled by the operator's store or stores, then calculated weights shall be reported to the Board as part of the annual report.

(h) The Board shall, at least once per measurement period, calculate and publish a co–mingled recycling rate. The co–mingled recycling rate shall be calculated through waste characterization studies that determine the percentage of plastic carryout bags relative to other film plastic materials collected for recycling.

(i) Although an operator may use a designated reporting party or parties to submit the information required in this section, an operator is nevertheless responsible for compliance with the reporting and other requirements of this Article and may be subject to penalties for non–compliance due to the action or non–action of its designated reporting party or parties.

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Section 42252, Public Resources Code.

HISTORY

1. New section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

§ 17987.5. Submittal of Confidential, Proprietary Data or Trade Secrets.

The submittal of data or information to the Board that is confidential, proprietary or a trade secret under applicable California law shall will be subject to the provisions of Title 14, California Code of Regulations, Article 4 (commencing with Section 17041).

NOTE: Authority cited: Sections 40502 and 42252, Public Resources Code. Reference: Section 42252, Public Resources Code.

HISTORY

1. New section filed 7–30–2007 as an emergency; operative 7–30–2007 (Register 2007, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–28–2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–28–2008 as an emergency; operative 1–28–2008 (Register 2008, No. 5). A Certificate of Compliance must be transmitted to OAL by 4–28–2008 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4–28–2008 as an emergency; operative 4–28–2008 (Register 2008, No. 18). A Certificate of Compliance must be transmitted to OAL by 7–28–2008 or emergency language will be repealed by operation of law on the following day.

Chapter 4.5. Farm and Ranch Solid Waste Cleanup and Abatement Grant Program

Article 1. Authority

§ 17990. Scope.

(a) These regulations implement the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program, a grant program for local agencies for purposes of cleaning up and abating the effects of solid waste that is illegally disposed of on farm or ranch property. Regulations contained herein are promulgated pursuant to Public Resources Code (PRC) Chapter 2.5 of Part 7 of Division 30.

(b) Notwithstanding any other provision, the grant program shall be funded from the following funds:

(1) The Integrated Waste Management Fund;

(2) The California Tire Recycling Management Fund;

(3) The California Used Oil Recycling Fund.

(c) The Board shall be authorized to expend the money in the Farm and Ranch Solid Waste Cleanup and Abatement Account for the grant program upon appropriation by the Legislature in the annual Budget Act.

(d) Each year, as part of the annual report required to be submitted pursuant to Section 40507, the Board shall report to the Governor and the Legislature on the actions it has taken under the grant program and the number of illegal sites that have been cleaned up and abated pursuant to the grant program.

NOTE: Authority cited: Sections 48100, 48103 and 48104, Public Resources Code. Reference: Section 48100, Public Resources Code.

HISTORY

1. New chapter 4.5 (articles 1–5, sections 17990–17994.3), article 1 (section 17990) and section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 2. Definitions

§ 17991. Definitions.

For the purposes of this Chapter:

(a) "Agreement" means the written document, any amendment(s) and written change orders thereto, which is signed by the Board or its designated representative and the grant recipient and which defines the terms, provisions and conditions governing the grant.

(b) "Applicant" means a local agency, resource conservation district, or Native American tribe applying for a grant for cleanup and/or abatement administered by the California Integrated Waste Management Board.

(c) "Board" means the California Integrated Waste Management Board.

(d) "Farm and/or Ranch property" means a piece of property, publicly or privately owned, that is used for rangeland or agricultural activities such as, but not limited to commercial livestock and crop production, horticulture, aquaculture, silviculture, floriculture, vermiculture and viticulture. Farm or ranch property need not have active sales or production but shall be appropriately zoned or otherwise authorized for agricultural activities. Farm or ranch property includes appurtenant easements or right–of–ways such as, but not limited to, public roads and utilities.

(e) "Grant recipient or grantee" means an applicant whose grant application has been awarded and who has executed a grant agreement pursuant to Public Resources Code section 48101(c).

(f) "Illegal disposal site" means:

(1) A disposal site that is not permitted and not exempt from obtaining a permit and is not a closed site as defined section 20164 of Title 27, Division 2 of California Code of Regulations on which cleanup may be required to abate a nuisance or protect public health and safety and/or the environment.

(g) "Local agency" means the enforcement agency, or other municipal department, that is designated to implement this Chapter by a county or city or a joint powers authority consisting of cities and counties and formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(h) "Native American tribe" has the same meaning as tribe, as defined in subdivision (b) Section 44201 of the Public Resources Code.

(i) "Nuisance" includes anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and affects at the same time an entire community, neighborhood, or any considerable number of persons although the extent of the annoyance or damage inflicted upon an individual may be unequal and which occurs as a result of the storage, removal, transport, processing or disposal of solid waste.

(j) "Resource conservation district" is a "special district" of the state of California, set up under PRC, Division 9, which is a locally governed agency with it's own locally appointed, independnet board of directors.

(k) "Remedial action" means any action to abate, prevent, minimize, stabilize, mitigate, or eliminate a threat to public health and safety and/or the environment.

(*l*) "Responsible party" includes any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who by contract, agreement or otherwise arranged for the transportation to and/or disposal of solid waste at the illegal disposal site;

The term "responsible party", as defined above, may only be construed within the context of this Chapter and Public Resources Code sections 48100 et seq. and shall not be interpreted under any other local, state, or federal statute.

(m) "Threat" or "threaten" means a condition creating a probability of substantial harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Sections 48100, 48102 and 48106, Public Resources Code.

HISTORY

1. New article 2 (section 17991) and section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsection (b), adopting new subsections (h) and (j) and relettering subsections filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

Article 3. Eligibility Requirements

§ 17992.1. Purpose.

The Board may award grants directly from the account to local agencies. Grants shall be used to assist the Board in complying with Public Resources Code section 48100 et seq.

NOTE: Authority cited: Sections 48100, 48101(a) and 48103, Public Resources Code. Reference: Sections 48100 and 48101(a), Public Resources Code.

HISTORY

1. New article 3 (sections 17992.1–17992.4) and section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 17992.2. Funding Eligibility.

(a) Grant funds may be used only for remedial actions at illegal disposal sites or to reimburse qualifying property owners for eligible costs incurred by remedial actions to their property.

(b) Grant funds may be used only for those eligible remedial actions pursuant to section 17992.4.

NOTE: Authority cited: Sections 48100, 48101(b) and 48103, Public Resources Code. Reference: Section 48101(b), Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsection (a) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17992.3. Site Eligibility.

(a) Candidate sites may be eligible for funding only if:

(1) The site is an illegal disposal site as defined in section 17991; and

(2) The site is on a farm and/or ranch property as defined in section 17991; and

(3) The responsible party either cannot be identified, located, or pay for timely and proper remediation; and

(4) Remedial action is required to protect public health and safety and/or the environment, or to abate a nuisance; and

(5) Neither the applicant nor the private property owner was responsible for the illegal disposal of solid waste on the farm or ranch property.

NOTE: Authority cited: Sections 48100, 48102 and 48106, Public Resources Code. Reference: Sections 48102 and 48106, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsection (a)(5) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17992.4. Eligible and Ineligible Remedial Actions.

(a) Remedial actions that are appropriate for the use of funds include, but are not limited to: waste removal and disposal and related actions; drainage controls; grading; slope and foundation stabilization; excavation, revegetation, recycling, and site security. Public education to prevent reoccurrence of the illegal disposal is eligible for funding only if included with any of the above eligible remedial actions.

(b) Ineligible remedial actions include, but are not limited to: closure as defined in Section 20164 of Title 27, Division 2 of the California Code of Regulations; ground water remediation; operation and maintenance of leachate, surface water, or vadose zone monitoring systems; closure and postclosure maintenance services; improvements to property for postclosure land uses; preparation of closure or postclosure maintenance plans; removal, abatement, cleanup or otherwise handling of hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. section 9601(14)].

NOTE: Authority cited: Sections 40502, 48025, 48100 and 48103, Public Resources Code. Reference: Sections 40502 and 48025, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 4. Grant Process

§ 17993.1. Grant Application Filing Period.

Application packages for grant funding shall be accepted on a continual basis and will be reviewed, scored and ranked quarterly. Application packages received by the Board on or before January 1, April 1, July 1, and October 2 will be considered for award in the quarter commencing on that date.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Section 48100, Public Resources Code.

HISTORY

1. New article 4 (sections 17993.1–17993.7) and section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 17993.2. Grant Amounts.

(a) The Board shall not fund more than two hundred thousand dollars ($200,000) per fiscal year for any applicant. If a grant is awarded to a joint powers authority, the joint powers authority and all the cities and counties it represents are limited to a maximum of two hundred thousand dollars ($200,000) per fiscal year. No single cleanup or abatement project shall exceed fifty thousand dollars ($50,000).

(b) The Board shall not fund administrative costs of grantees, which exceed seven (7) percent of the grant.

(c) The Board or the Department of Finance may audit the recipient's records and/or any contractor or subcontractor regarding moneys received pursuant to this Article.

NOTE: Authority cited: Sections 48100, 48101(a) and 48103, Public Resources Code. Reference: Section 48101(a), Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsections (a) and (b) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17993.3. Contents of the Grant Application Package.

(a) A complete application package for cleanup and abatement work shall include, but is not limited to, all of the following elements:

(1) A Farm and Ranch Solid Waste Cleanup and Abatement Grant Application Cover Sheet, provided by the CIWMB, (CIWMB 634) 02/03, See Appendix A;

(2) A copy of an adopted resolution from the applicant's governing body, authorizing the submittal of the application and identifying the title of the individual authorized to execute any agreements, contracts and requests for payment to carry out the project;

(3) A description of the following:

(a) the need and overall objective of the project(s),

(b) innovative programs within the jurisdiction to discourage illegal dumping,

(c) any other funds available to cleanup the site(s),

(d) any funds used in the past to remediate problems at the site(s),

(e) the proposed method to evaluate the success of the project, and

(f) previous experience remediating similar sites;

(4) Site Characterization Form (CIWMB 635) (02/03), (See Appendix A) for each site proposed for remediation activities;

(5) A vicinity map showing the location of each site;

(6) The existing zoning description and designation for the parcel of each site proposed to cleanup;

(7) A signed and notarized affidavit or letter from the property owner stating that they were not responsible for the illegal dumping or degradation of the environment which the grant is proposing to remediate;

(8) A statement that a responsible party cannot be identified, or located, or can pay for timely and proper remediation.

(9) A Work Plan describing the proposed tasks needed to remediate each site, including recycling activities, and an implementation schedule for the proposed tasks; and

(10) A cost estimate for each site which provides a task description, staffing information, duration of each task, a per–hour–cost of each task as well as a total cost for the project.

(b) A complete application package to reimburse costs previously incurred by a farm or ranch property owner shall include all elements in subsection (a), except for 17993.3(a)(3), 17993(a)(9), and 17993(a)(10). In addition, the following elements shall be included in the application for reimbursement:

(1) A description of the following:

(a) the initial need and overall objective of the project(s) at the time it was remediated,

(b) innovative programs within the jurisdiction to discourage illegal dumping,

(c) any other funds available to reimburse costs previously incurred to cleanup the site(s),

(d) any funds used in the past to remediate problems at the site(s),

(e) the success of the project; and

(2) A description of the tasks taken to remediate the site, including the total amount of material removed, types and quantities of waste disposed and recycled, disposal, recycling, and photographs of the project; and

(3) The cost and receipts associated with each task in remediating the site, including costs associated with disposal, recycling, equipment and labor.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Section 48100, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending section filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17993.4. Review of Grant Applications.

(a) Board staff shall review each grant application package to verify that it is complete pursuant to section 17993.3 and meets the eligibility requirements pursuant to Article 3 of this Chapter.

(b) If the application package is complete and indicates eligibility it will be reviewed and evaluated by the Board based on criteria set forth in sections 17993.5.

(c) The Board shall notify the applicant within twenty days (20) of receipt if the application package is determined to be incomplete. The Board may request additional information related to the grant application required by section 17993.3. The applicant will have a minimum of ten (10) working days, or an additional time period specified by the Board in writing, to submit the requested information to the Board. If the specified timeframe is not met, the application will be disqualified from consideration for a grant during the current grant cycle.

(d) The Board shall notify the applicant within fifteen days (15) from the date that the application is deemed complete if the application package does not meet the eligibility requirements. Written notice of the reason for ineligibility will be sent to the applicant.

NOTE: Authority cited: Sections 48100, 48101 and 48103, Public Resources Code. Reference: Section 48103, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 17993.5. Grant Criteria.

The criteria listed below will be used to evaluate each complete application.

(a) Demonstrated the need for the project.

(b) Measurable goals and objectives in the Work Plan.

(c) Descriptions by task of the activities to be undertaken to achieve the objectives.

(d) Description of a method to evaluate the success of the project and determine whether objectives were accomplished.

(e) Demonstration that the project is cost effective. Preference will be given to applicants who use cost savings, such as, use of volunteer labor, in–kind services, and recycling options.

(f) Detail that expenses are reasonable with all program elements are itemized in the budget.

(g) Present complete and clear proposal setting forth deadlines and evidence that applicant or its contractor have sufficient staff resources, technical expertise, and experience managing grant programs.

(h) The quality, cost–effectiveness and innovation of the applicant's programs designed to discourage illegal waste disposal and to encourage the proper waste disposal in permitted solid waste disposal facilities.

(i) The level of health and safety threats or environmental concerns and public nuisance described in the application.

(j) The environmental soundness and practicality of the proposal.

(k) The maximization of available funds.

(*l*) The applicant's ability to adequately remediate the site with available funds.

(m) The availability of other funds to cleanup the site.

(n) Evidence of a green procurement policy, requiring applicants to use recycled content products, recycled or reusable products, or engage in other waste reduction activities where appropriate and feasible.

NOTE: Authority cited: Sections 48100, 48102 and 48103, Public Resources Code. Reference: Section 48103, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsections (h) and (*l*) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17993.6. Local Agency Grant Agreement for Cleanup.

(a) If the Board approves the grant award, the grant recipient and the Board shall enter into a written grant agreement which contains a description of the project(s) as approved, and which identifies and ensures compliance with this chapter and which incorporates all standard terms and conditions required of state agency agreements.

(b) Payment for work performed by the grantee will be made only after the following conditions have been met and approved by the Board:

(1) completion of the site remedial action as proposed, and

(2) submission of a report on the types and quantities of waste disposed and recycled, and the costs associated with disposal, recycling, equipment and labor.

(c) The grant recipient must obtain prior written approval from the Board, or its designated representative, for any changes to grant agreement. All requests must include a description of the proposed change(s) and the reason(s) for the change(s).

(d) Upon determination by the Board that the recipient has failed to comply with the terms of grant agreement the Board may terminate the grant in whole, or in part, at any time prior to the date of completion. The Board shall notify the recipient in writing of the reasons for the termination of the grant and the effective date of the termination within five (5) working days of the determination.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Section 48101, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending subsection (a) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17993.7. Grant Agreement for Reimbursements.

A grant agreement for reimbursement to a property owner shall include all elements of 17993.6 except for (b) and (c). In addition, the following shall be included:

(a) Payment shall be made only after the site has been fully remediated

(b) The grantee shall disperse the funds, within sixty days (60) of receipt, to the property owner.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Section 48101, Public Resources Code.

HISTORY

1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending section heading and subsection (b) filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

Article 5. Property Owner Grant Application Request

§ 17994.1. Request Process for Cleanup.

(a) A farm or ranch property owner may initiate the process for a grant application by submission of the following information to the applicant for consideration:

(1) A letter requesting that the applicant apply for a grant under this Chapter on the farmer's or rancher's behalf. The letter shall include the name, mailing address and phone number of the property owner and the approximate type and quantity of waste disposed on the property; and

(2) A vicinity map showing the location of each site and access points to the parcel of each site being requested for cleanup or reimbursement under the grant.

(3) A signed and notarized affidavit or letter from the property owner stating that they were not responsible for the illegal dumping or degradation of the environment which the grant is proposing to remediate.

(b) The applicant has forty–five (45) days, from receipt of the grant application request, to review the request, conduct a site visit and provide a written determination that the owner is or is not eligible for funds under the Farm and Ranch Solid Waste Cleanup and Abatement Grant program.

(c) If the applicant determines that the property owner is not eligible for a grant, it shall provide the property owner with the reasons. The reasons shall be provided within forty–five (45) days of the receipt of the application request.

(d) Once the applicant determines the property owner's application request is complete, it shall submit a grant application to the Board within sixty (60) days.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Sections 48100 and 48103, Public Resources Code.

HISTORY

1. New article 5 (sections 17994.1–17994.3) and section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending article heading and section filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

§ 17994.2. Request Process for Reimbursement of Prior Cleanups.

A farm or ranch property owner may initiate the process for a grant application for reimbursement of prior cleanups. If the owner requests reimbursement, the owner shall apply pursuant to 17994.1 and include the following information:

(1) A description of the tasks taken to remediate the site, including the total amount of material removed, types and quantities of waste disposed and recycled, and photographs of the project; and

(2) The cost and receipts associated with each task in remediating the site, including costs associated with disposal, recycling, equipment and labor.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Sections 48100 and 48103, Public Resources Code.

HISTORY
1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 17994.3. Property Owner Appeal Rights.

(a) If the applicant determines that the property owner is responsible for the illegal waste disposal, the property owner may appeal the decision to the governing body with jurisdiction over the applicant.

(b) The property owner shall submit an appeal to the governing body within fifteen (15) days of receipt of determination of responsibility.

(c) The appeal shall describe the factual basis for the appeal and shall include all relevant documentation.

(d) The governing body shall determine whether or not to overturn the applicant decision within forty–five (45) days of receipt.

NOTE: Authority cited: Sections 48100 and 48103, Public Resources Code. Reference: Section 48100, Public Resources Code.

HISTORY
1. New section filed 6–30–2000; operative 6–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Change without regulatory effect amending section filed 5–28–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).

Chapter 5. Enforcement of Solid Waste Standards and Administration of Solid Waste Facility Permits; Loan Guarantees

Article 1. Definitions and General Provisions

§ 18010. Scope.

(a) This chapter is adopted pursuant to and for the purpose of implementing the California Integrated Solid Waste Management Act of 1989 (ACT) commencing with Section 40000 of the Public Resources Code (PRC), as it may be amended from time to time. These regulations should be read together with the Act.

(b) This Chapter implements those provisions of the Act relating to solid waste facilities and disposal sites, and application of minimum standards for solid waste handling and disposal (Chapter 3 of this Division, and 27 CCR Division 2, Subdivision 1 (§20005 et seq.)) to such facilities. Nothing in this chapter is intended to limit the authority of the enforcement agency or the board to enforce the minimum standards as they apply to collection, storage, and removal of solid wastes pursuant to the provisions of Sections 43209 and 43300 of the Public Resources Code (PRC). Nothing in this Chapter is intended to limit the authority of the state or local health agencies.

NOTE: Authority cited for Chapter 5 (Sections 18010–18354, not consecutive): Sections 40502, 43020, 43200 and 43214, Public Resources Code (PRC). Reference: Sections 43200–45601, Public Resources Code.

HISTORY
1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of chapter 5 heading filed 10–11–96; operative 10–11–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 41).
3. Change without regulatory effect amending subsection (b) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

§ 18011. Definitions.

(a) Unless the context otherwise requires, the following definitions shall govern construction of this Chapter:

(1) "Abandoned site" means a site where there is no responsible party as determined by the local enforcement agency and the board.

(2) "Act" means the California Integrated Solid Waste Management Act of 1989.

(3) "Applicant" means the proposed operator of a facility.

(4) "Certified" means submitted and stated under oath, affirmation, or penalty of perjury.

(5) "Certification" means certification by the Board of an enforcement agency pursuant to Section 43200 of the Public Resources Code and Articles 2.1, and 2.2 of this Chapter.

(6) "Closed site" means a solid waste disposal site that has ceased accepting waste and has documentation that closure was conducted in accordance with applicable statutes, regulations, and local ordinances in effect at the time.

(7) "Decertification" means an action by the California Integrated Waste Management Board which withdraws, partially or fully, prior certification(s) issued to the enforcement agency. This action modifies the enforcement agency's authority within its jurisdiction.

(8) "Enactment" means a federal, state, regional, or local statute, ordinance, regulation, permit, or similar provision having the force of law.

(9) " Enforcement action" means an action of the enforcement agency or the board, taken pursuant to the act or this chapter, including, but not limited to issuing a notice and order, a cease and desist order, cleanup or abatement order, or a corrective action order; to institute a proceeding to modify, suspend, or revoke a permit; to institute a judicial proceeding to obtain an injunction; or to institute a judicial action to obtain civil penalties.

(10) "Evaluation workplan" means a type of corrective action specified by the Board. The action requires the LEA to develop a schedule to address jurisdictional compliance issues identified during the LEA evaluation process. The evaluation workplan is subject to Board approval.

(11) "Facility" means a solid waste facility as defined in Public Resources Code Section 40194 or disposal site as defined in Public Resources Code Section 40122.

(12) "Facility operator" means the operating unit, and other person(s) who through a lease, franchise agreement or other arrangement with the owner of the property is granted the approval to operate a solid waste facility, disposal site, transfer or processing station, composting station, or solid waste handling system, or the owner of the property.

(13) "Illegal site" means a solid waste disposal site that is not permitted and not exempt from obtaining a permit and is not a closed site.

(14) "Inactive site" means a site that is temporarily idle, for a specific period due to known circumstance and not part of the normal operation pattern contained in the solid waste facilities permit.

(15) "Local Agency" means a local public agency or department of a county or a city, a joint powers jurisdiction, or a special district.

(16) "Local Enforcement Agency" (LEA) means an enforcement agency with board certification(s) totally separate from the operating unit(s) of the local governing body. An LEA is a comprehensive solid waste enforcement agency which performs permitting, inspection, and enforcement duties for solid waste handling, and permitted, closed, abandoned, exempt, illegal, and inactive facilities. An LEA is solely responsible for carrying out solid waste enforcement in its jurisdiction as defined in 14 CCR Division 7, 27 CCR Division 2, Subdivision 1 (§20005 et seq.) and Division 30 of the Public Resources Code. Upon certification(s) the LEA shall have full power to execute the Act and the regulations adopted hereto.

(17) "Operating unit" means a local agency within the jurisdiction of the designating local governing body that operates, causes to operate, or administers contracts or agreements for any portion of a facility or solid waste handling and disposal system.

(18) "Operation" means those activities governed by the EA notification tier requirements set forth in sections 18103–18103.3.

(19) "Owner of the property" means the person or persons owning the fee interest in the property and the person or persons owning any leasehold interest in the property.

(20) "Permit" means a solid waste facilities permit.

(21) "Property" means the real property on which a facility or disposal site, any part thereof, or any support structure exists or is proposed to exist, including any portion of such real property that is not occupied by the facility or any support structure but that is contained within the legal description of the land on which the facility is located as that description is set forth in the most recently recorded deed.

(22) "Regional LEA" means an enforcement agency certified by the Board pursuant to Article 2.1 of this Chapter, with permitting, inspection and enforcement duties within multiple counties.

(23) "Violation" means a lack of compliance with a particular standard, permit term or condition, or other applicable solid waste law or regulation. A violation may be indicated by the checking of a box in the violation column of an inspection report or by other written documentation. The documentation shall indicate the specific standard, permit term or condition, or other solid waste law or regulation not in compliance.

NOTE: Authority cited: Sections 40502, 43020, 43200, 43214 and 43231, Public Resources Code. Reference: Sections 43200–45042, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a)(1) and (a)(14) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

[The next page is 795.]

3. Change without regulatory effect amending subsection (a)(14) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Amendment of subsection (a)(19) and new subsection (a)(20) filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
5. New subsections (a)(7) and (a)(9), subsection renumbering and amendment of NOTE filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).
6. New subsection (a)(22), subsection renumbering and amendment of NOTE filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18012. Mailing and Delivery.

Except as otherwise provided in this chapter, any requirement of this chapter that a document be transmitted, delivered, provided, or sent to any person shall be satisfied in one of the following ways: by personal delivery to the person, by personal delivery to an address the person has given, or by first class United States mail, postage prepaid, to an address the person has given.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43200–45601, Public Resources Code.

HISTORY

1. Amendment of NOTE filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).

§ 18013. Mailing Documents to the Board.

HISTORY

1. Change without regulatory effect repealing Section 18013 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 81, No. 21).

§ 18020. Maintenance of Files.

(a) Every enforcement agency shall maintain a file on each disposal site and facility within its jurisdiction. These files shall include all solid waste facilities that have been granted a permit or that are or have been the subject of an application for a permit. The file on each facility or site shall contain all applications, permits, notices, orders, reports, correspondence, and other documents pertaining to the facility or site, which have been initiated or received by the enforcement agency. However, the enforcement agency, pursuant to Section 44102 of the Public Resources Code, shall separately maintain all papers relating to the facility or site for which a request for confidential treatment has been made, and such papers shall be suitably protected until such time as it has been determined that confidential treatment is not required.

(b) The file for each facility or site shall bear a number which is determined and assigned by the board.

(c) Each enforcement agency shall maintain a current list of all files it maintains. The list shall be available for public inspection upon request.

(d) All files and their contents shall be retained by the enforcement agency for as long as a facility or disposal site physically exists, and until written discard approval is given by the board.

(e) Upon certification each LEA shall maintain a separate and current chronological log of the legal and enforcement actions, taken pursuant to 14 CCR Division 7, 27 CCR Division 2, Subdivision 1 (§20005 et seq.) and Parts 4 and 5 of Division 30 of the Public Resources Code. This log shall be retained by the LEA as a file, and shall include at a minimum the following information: facility or site name, address, facility number, the action type, the date issued, and the outcome of the action(s).

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 40062, 43200, 43209, 45000, 45200, 45201, 45300 and 45301, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (b) and (e) and amendment of NOTE filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (e) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

Article 2. Designation of a Local Agency and the Appointment of Hearing Panels or Hearing Officer

§ 18050. Scope.

This Article sets forth the requirements for the designation of a local agency as an enforcement agency, and the establishment of hearing panels or selection of a hearing officer pursuant to the California Integrated Solid Waste Management Act of 1989. A local governing body of a city, county, or a joint powers body may designate a single local agency to be its enforcement agency pursuant to Section 18051 of this Article. Upon board approval of the designation and certification(s) of the local agency pursuant to Articles 2.0, 2.1, and 2.2 of this Chapter, the designated local agency shall become the local enforcement agency (LEA) in the designated jurisdiction. A local governing body may enter into a contract or joint powers agreement with another LEA for permitting, inspection, and enforcement duties within its territorial jurisdiction. This action is subject to board approval of the designation and certification of the contract LEA or the joint powers LEA.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–45601, Public Resources Code.

HISTORY

1. Amendment of article heading and section text filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending article heading and section filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18051. Designation of a Local Agency.

Each local governing body that wishes to designate a local agency shall so notify the board. The notice of designation, by the local governing body of a local agency, shall be part of a designation information package (DIP) which includes the following information:

(a) A completed form CIWMB 1000 "Notice of Designation of Local Agency" (1994), which is incorporated herein by reference (See Appendix A.);

(b) A cover letter requesting approval of the designation by the board;

(c) Copies of all resolutions and other official documents necessary to establish the manner in which Article 1 of Chapter 2 (commencing with Section 43200) and Chapter 4 (commencing with 44308) of the Public Resources Code and Section 18060 of this Chapter have been satisfied;

(d) An organizational chart documenting the separation of the designated agency from public agencies or departments that are the operating units under the local governing body;

(e) An organizational chart documenting the organization of the designated agency;

(f) An identification of each required hearing panel or hearing officer pursuant to Section 18060 and 18081(e)(2) of this Chapter;

(g) A tabulation of city resolutions including the listing of all city names, their populations, and the percent of cities and populations approving the designation for the jurisdiction;

(h) An enumeration of every solid waste facility and disposal site in the jurisdiction including permitted, closed, abandoned, exempt, illegal, and inactive facilities. The enumeration shall include the site address or location, the owner(s) and operator(s) name(s), address(es), and site/emergency telephone numbers, and shall state whether the site or facility lies within the unincorporated area of the jurisdiction, or within an incorporated city and the city name; and

(i) An enumeration of every solid waste handling and collection operator in the jurisdiction. The enumeration shall include the requirements of 14 CCR 17332.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200 and 43203 through 43207, Public Resources Code.

HISTORY

1. Amendment of section heading and text filed 12–7–91; operative 12–7–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of section filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (a) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
4. Change without regulatory effect amending subsection (c) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
5. Change without regulatory effect amending subsection (f) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18052. Redesignation of Existing LEAs.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200 and 43203–43207, Public Resources Code.

HISTORY

1. Repealer and new section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Repealer filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18053. Distribution of Notice of Designation.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Section 66796.21, Government Code.

HISTORY

1. Repealer filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).

§ 18054. Review of Designation.

(a) Upon receipt of the designation information package (DIP), pursuant to Section 18051, the board staff shall, within 45 days, review the designation and notify the local agency and the designating local governing body in writing whether or not the proposed DIP is complete and accepted by the board staff. Should the DIP be incomplete, the local governing body and/or its designated local agency shall provide to the board the specific missing information thereby starting a new 45 day review period from the date of resubmittal.

(b) The board shall use the following criteria when reviewing designations:

(1) the designated agency shall demonstrate capability and experience in the enforcement of public health and environmental regulations;

(2) the designation and certification must be consistent with the enforcement scheme contemplated in the Countywide Integrated Waste Management Plan upon its adoption and the LEA's Enforcement Program Plan (EPP); and

(3) The designated local agency shall fully comply with certification requirements pursuant to Article 2.1 of this chapter.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200, 43203 and 43204, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (b)(1) and (b)(2) and repealer and new subsection (b)(3) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18055. Effective Date of Designation.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–43219, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Repealer filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18056. Local Governing Body Withdrawal of LEA Designation.

(a) A designation of an LEA may be withdrawn by the local governing bodies that originally made the designation. Notice of the withdrawal shall be given to the board a minimum of 90 days in advance of the desired effective date of the withdrawal. This shall be done by a local governing body resolution or other official document in the same manner the designation was made. The notice of withdrawal shall specify whether a new local agency is to be designated, or whether the local governing body intends to have the Board become the new enforcement agency. If the notice of withdrawal provides that a new local agency is to be designated, then the withdrawal of designation shall be expressly conditioned on board approval of the new designation. If the notice of withdrawal states that it is the local governing body's intention for the board to become the new enforcement agency, then the withdrawal of designation should not become effective until the Board notifies the local governing body that it is prepared to assume responsibility as the enforcement agency. The Board shall provide such notification on or before: (1) the end of the current fiscal year; or (2) 90 days after the notice of withdrawal is given to the Board, whichever is later. The Board shall then become the enforcement agency.

(b) All enforcement actions, pending violations, orders of corrections, request for technical reports, or other enforcement agency efforts to achieve compliance with state requirements (including LEA enforcement actions and state minimum standards and permits) which were in effect under the departing LEA shall remain in effect under the jurisdiction of the new enforcement agency.

(c) Notice of designation of a new local agency shall be made in the manner specified in Section 18051.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43203, 43206 and 43216, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsection (a) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Amendment of section heading and section filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).

§ 18060. Appointment of Hearing Panel(s) or Hearing Officers.

(a) Before the board can approve a designation, the designated local agency's local governing body shall appoint a hearing panel or hearing officer. The hearing panel shall be composed of either members of the local governing body or an independent hearing panel pursuant to Section 18081(e)(2). There shall be an independent hearing panel or hearing officer when in the jurisdiction of the enforcement agency there exists a publicly owned or operated solid waste facility or disposal site.

(b) Notice of the appointment of a hearing panel(s) or hearing officer shall be given the board and shall include the following:

(1) The name of each member and her or his position in the local governing body. If an independent hearing panel is appointed pursuant to Section 44308 of the Public Resources Code, an indication of which person is the technical expert in solid waste management, which person is the member of the local governing body, and which person is the representative of the public at large;

(2) the address to which filings and correspondence shall be mailed;

(3) indication whether each hearing panel was appointed pursuant to Section 44308(a)(1) or (a)(2) of the Public Resources Code; and

(4) the date, terms and conditions of the appointment.

(c) Notices of appointments to vacant positions on the hearing panel or hearing officer shall be given in the same manner.

(d) When the board serves as the enforcement agency, hearing panels shall be as set forth in Public Resources Code Section 44309.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200 and 44308, Public Resources Code.

HISTORY

1. Amendment filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (b)(1) and (b)(3), repealer of subsection (b)(4) and subsection renumbering, and amendment of subsection (c) and NOTE filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsections (b)(1), (b)(3) and (d) and amending NOTE filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).

4. Change without regulatory effect amending section heading and subsections (a)–(b) and (c) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

Article 2.1. LEA Certification Requirements

§ 18070. Scope.

(a) This article sets forth the LEA certification types, the requirements for certification and certification maintenance including, but not limited to: technical expertise, adequacy of staff resources, adequacy of budget resources, training, and the LEA's Enforcement Program Plan (EPP), which the designated local agency shall develop, submit for board approval, and adopt pursuant to Public Resources Code Section 43209(e) and Section 18077 of this Chapter, and the periodic review of the LEA certification(s) pursuant to Article 2.2 of this Chapter.

(b) After certification(s) is issued and upon board approval, the designated local agency shall become the sole LEA in its jurisdiction, and shall maintain and comply with its board approved EPP to exercise its statutory power and authority pursuant to Division 30 of the Public Resources Code, 14 CCR Division 7, and 27 CCR Division 2, Subdivision 1 (§20005 et seq.). The LEA shall enforce the state and local minimum standards for solid waste collection, handling, storage, and disposal for the protection of the air, water, and land from pollution and nuisance, and for the protection of the public health and safety, and the environment. This Article also addresses board directories of hearing panels or hearing officers and enforcement agencies.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–45601, Public Resources Code.

HISTORY

1. Repealer and adoption of new section, article heading and NOTE filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (b) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Change without regulatory effect amending subsection (b) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18071. Types of Certification.

(a) The Board may approve a designated local agency and issue certification(s) to the local agency in one or more of the following types of certifications:

(1) Type "A": permitting, inspection, and enforcement of regulations at solid waste disposal sites;

(2) Type "B": permitting, inspection, and enforcement of regulations at solid waste transformation facilities;

(3) Type "C": permitting, inspection, and enforcement of regulations at transfer and processing stations, materials recovery facilities, and composting facilities; and

(4) Type "D": inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

(b) In jurisdictions where LEAs lack a certification to permit a new type of facility, the permit application, for that type of facility, shall be filed by the applicant with the board. The LEA shall, within 120 days of the permit application, obtain certification for this facility type, or the board shall review the performance of the LEA pursuant to Section 18051 and Article 2.2 of this Chapter and compliance with Public Resources Code Section 43201.

(c) An LEA lacking a specific certification type pursuant to 18071(a) may submit a new complete EPP for board review and request issuance of an additional certification to perform permitting, inspection, and enforcement duties in another jurisdiction, or inspection and enforcement duties in its jurisdiction, both pursuant to Article 2.1 of this Chapter, and subsequent to board approval.

(d) When in the LEA's jurisdiction only one permitted solid waste disposal facility exists and its permit is surrendered, the LEA shall retain its type "A" certification, unless the LEA certification is withdrawn by the board.

(1) For LEAs to be issued type "D" certification they shall be required to have type "A" certification.

(e) A designated local agency shall demonstrate that it meets the certification requirements for each certification type requested. The LEA shall maintain compliance with the requirements of this Chapter.

(f) Sections 18071 through 18075 of this Article set forth the LEA certification requirements pursuant to Public Resources Code Section 43200.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–43204 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (b) and (e) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18072. Technical Expertise.

(a) Performance of permitting, inspection, and enforcement duties and responsibilities of comprehensive solid waste enforcement issues shall reside solely within an LEA. The LEA shall have one or more full time staff members dedicated solely for solid waste issues. For all certification types the dedicated staff shall be composed of at least one registered environmental health specialist (REHS), pursuant to Sections 106600 through 106735 of the Health and Safety Code. Additional staff for permitting, inspection, and enforcement duties may be a REHS(s), or person(s) meeting the requirements of Sections 106635 of the Health and Safety Code, as certified by the LEA program director or manager.

(1) The REHS shall have experience and training in solid waste enforcement. This experience and training shall be current and subsequent to the enactment of the California Integrated Waste Management Act of 1989 commencing with Section 40000 of the PRC.

(2) The REHS experience and training shall include the following:

(A) permitting and closure/postclosure duties as described in 14 CCR 18082;

(B) inspection duties as described in 14 CCR 18083; and

(C) enforcement duties as described in 14 CCR 18084.

(3)(A) For type "A" certification, pursuant to 14 CCR 18071(a)(1), LEA review of documents or reports generated pursuant to engineering requirements of Public Resources Code Division 30 and 27 CCR Division 2, Subdivision 1 (§20005 et seq.), beyond the technical abilities of the LEA's staff, shall be performed by public and private entities as specified in the LEA's EPP, whose staff meet the following definitions contained in 27 CCR 20164: "Certified Engineering Geologists," "Registered Civil Engineer," and "Soil Engineer."

(B) The LEA review in subsection (a)(3)(A) may be contracted for by the LEA or the LEA may use appropriate CIWMB staff to perform those duties.

(4) For type "B" and "C" certifications, pursuant to 14 CCR 18071(a)(2 and 3), LEA review of documents or reports generated pursuant to engineering requirements of Public Resources Code Division 30 and 14 CCR Division 7, may be performed by public and private entities, as specified in the LEA's EPP, under contract to the LEA, which meet the following definitions contained in 27 CCR 20164: "Certified Engineering Geologists," "Registered Civil Engineer," and "Soil Engineer."

(b) Counties or cities may have contracts or joint powers agreements pursuant to Government Code, section 6500 et. seq. or as authorized by law, with another county, city, or a joint powers jurisdiction LEA to provide permitting, inspection, and enforcement duties and responsibilities in the designated jurisdiction of the local governing body(s), with approval of the board. The above contracts or joint powers agreements shall preclude conflict of interest between the cities or counties, their designated LEA, or the LEA's consultants and facility operators in the jurisdiction. The following consulted professionals defined in 27 CCR 20164 shall not be facility operators or consultants for solid waste facilities or disposal sites within the LEA's jurisdiction unless approved by the board: "Certified Engineering Geologists," "Professional Land Survey-

or," "Registered Civil Engineer," "Registered Geologist," and "Soil Engineer."

(c) Any opinion, report, analysis, or other deliverable provided to an LEA through contract or joint powers agreement shall be endorsed, affirmed or denied by the contracting LEA.

(d) Notwithstanding subsection (a), designated local agencies for jurisdictions having a population of less than 50,000 persons and existing LEAs whose jurisdictional population grows beyond 50,000 persons, but does not exceed 80,000 persons, may alternately implement the following staffing provisions to demonstrate their technical expertise and adequacy of staff resources.

(1) staffing shall be determined and submitted for board approval pursuant to 14 CCR 18073; and

(2) permitting, inspection, and enforcement duties, for a designated local agency having demonstrated its adequacy of staff resources with one or less full time staff member, shall be performed by one individual REHS.

(e) Designated local agencies, which elect subsection (d) to fulfill staffing requirements, shall be issued temporary certification(s) by the board.

(1) This temporary certification(s) shall expire upon conclusion of the LEA performance evaluation by the board.

(2) The LEA shall be issued full certification(s) by the board when the evaluation confirms LEA compliance with Article 2.2 of this Chapter.

(f) LEAs with one or less staff members shall, upon the loss of staff, provide staff resources meeting the requirements of this section within 90 days, or the board shall become the enforcement agency within the LEA's jurisdiction until another local designated agency is approved and issued certification(s) by the board.

(g) The LEA shall resume temporary certification(s) status when staff is replaced pursuant to subsection (f) until the requirements of subsection (e)(1) and (2) are met.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–43204, 43207 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsection (a), new subsections (a)(1)–(a)(2)(C) and subsection renumbering, amendment of subsection (b), and new subsections (d)–(g) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Amendment filed 6–18–97; operative 7–18–97 (Register 97, No. 25).
4. Change without regulatory effect amending subsections (a), (a)(3)(A), (a)(4) and (b) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
5. Amendment of subsection (d) filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).
6. Change without regulatory effect amending subsection (a) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18073. Adequacy of Staff Resources.

(a) The LEA shall demonstrate the adequacy of its staff resources by submitting documentation of the following analyses:

(1) the number and type of operating and non–operating solid waste facilities, disposal sites, and collection and handling equipment;

(2) the number of annual compliance and projected complaint inspections based on the previous year's records and anticipated additions or deletions;

(3) the time allocation requirements of local agency staff for:

(A) inspections, travel, research, analysis of findings, and documentation;

(B) enforcement activities including warnings, notices, meetings, hearings, legal proceedings, and documentation;

(C) permit activities including reviews, modifications and revisions, and closure or postclosure activities, including applications and plan reviews, site evaluations and investigations, and documentation;

(D) corrective actions including: review and approval of site investigations, assessments, characterizations, remediation alternatives, and corrective measures;

(E) training including field, meetings, seminars, workshops, courses, and literature reviews;

(F) management including day to day operation scheduling, and supervision; and

(G) support staff both technical and non–technical.

(4) The staff resources shall be computed based on a Full Time Equivalence (FTE) not to exceed 230 eight hour work days per year per person. The FTE baseline hours shall be identified in the EPP.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–43204 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a) and (a)(2) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18074. Adequacy of Budget Resources.

(a) The LEA shall maintain a budget accounting process capable of identifying expenditures and revenues which are adequate to fulfill their LEA duties and responsibilities pursuant to its board approved EPP, this chapter, and Part 4 and 5 of Division 30 of the Public Resources Code. Additionally, LEAs shall, at the beginning of each fiscal year upon adoption by the local governing body, submit to the board supporting information demonstrating budget adequacy.

(1) The LEA shall use methods that demonstrate adequate budget resources for implementing the provisions of this Article. The LEA shall account for all anticipated expenditures, including but not limited to the following:

(A) staffing pursuant to 14 CCR 18073;

(B) monitoring and testing materials and equipment;

(C) health and safety protection equipment and materials for staff;

(D) travel and per diem for training seminars, conferences, etc.;

(E) enforcement actions including staff time and independent legal counsel costs to preclude conflict of interest and lack of timely initiation of legal actions pursuant to 14 CCR 18051(b)(6) and 14 CCR 18084;

(F) consultant and technical support;

(G) transportation; and

(H) agency overhead.

(2) LEAs shall identify their revenue by sources and amounts. Sources may include, but are not limited to:

(A) Funds from LEA Grant(s) Account;

(B) Permitting Fee(s);

(C) Inspection or Service Fee(s);

(D) Post Closure Fee(s);

(E) Tipping and Tonnage Fee(s);

(F) 5 Year Permit Review Fee(s);

(G) General Fund; and

(H) Other (specify).

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200–43204, 43207 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).

§ 18075. Training Requirements.

(a) LEA personnel shall be trained in solid waste enforcement. The LEA's training program shall be coordinated with the board as well as other state and local agencies, be part of the LEA's Enforcement Program Plan pursuant to 14 CCR 18077, and provide specific training in the following areas:

(1) permitting, inspection, and enforcement duties and responsibilities pursuant to Public Resources Code Division 30, Parts 4 and 5, 14 CCR Division 7 and 27 CCR Division 2, Subdivision 1 (§20005 et seq.), and local ordinances and resolutions relating to solid waste collection, handling, processing, storage, and disposal;

(2) inspection techniques and scheduling;

(3) preparation for hearing panel or hearing officer and court proceedings;

(4) administration practices within a solid waste enforcement program;

(5) monitoring equipment, data evaluation, and interpretation of the results as related to solid waste enforcement;

(6) attendance of board approved seminars and workshops;

(7) field staff health and safety training in the categories of: planning of field inspections, safety equipment, on-site procedures, decontamination and hazard recognition, and avoidance; and

(8) for type "A" certification, specific training in performance standards pursuant to 27 CCR 20695, when applicable.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43200–43204 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a) and (a)(5)–(a)(7) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsections (a)(1) and (a)(8) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Change without regulatory effect amending subsection (a)(3) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18076. Request for and Review of Certification.

(a) Within 45 days of receipt of a request for certification(s), the board shall notify the requesting local agency in writing as to whether the request in the form of an Enforcement Program Plan (EPP) pursuant to Section 18077 of this Chapter is:

(1) complete and accepted and shall be reviewed; or

(2) the EPP is incomplete and what specific information is missing, and needs to be submitted to the board to provide for a complete EPP. The board will require the agency to provide the specific missing information, thereby starting a new 45 day process from the date of resubmittal.

(b) When an EPP is complete and accepted, the board shall have 60 days from the date of the acceptance, to conduct a review of the designation and certification information in the EPP.

(1) The board shall issue a certification(s) decision stating which types of certification are to be issued or denied, and that the designation and EPP are approved or disapproved. A copy of the board decision shall be sent to the requesting agency, its local governing body, and all appropriate State agencies.

(2) If during the review process the board finds any specific deficiencies, it shall notify the requesting agency within 45 days from the date of acceptance for review. A new 60 day review period shall begin on the date of resubmittal.

(c) The board may elect to issue temporary LEA certification(s) and/or designation approval for specific time periods.

(d) After approval of the EPP, the board shall periodically review the LEA's enforcement program plan (EPP) and its implementation of the permitting, inspection, and enforcement programs pursuant to Public Resources Code Sections 43209 and 43214.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Section 43200–43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (a), (a)(2) and (b)(2), repealer and new subsection (c), new subsection (d) and amendment of NOTE filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).

§ 18077. Enforcement Program Plan (EPP).

(a) The LEA shall develop, adopt, and submit for board approval an EPP pursuant to Public Resources Code Section 43209(e). The EPP shall embody the designation and certification requirements and demonstrate that the LEA meets all the requirements pursuant to Public Resources Code Sections 43200, 43203, 43207, and 43209, 14 CCR Division 7, Chapters 3 and 5, and 27 CCR Division 2, Subdivision 1 (Section 20005 et seq.). At a minimum, the EPP shall include the following written components:

(1) a certification request letter;

(2) an accepted designation information package (DIP) pursuant to 14 CCR Section 18051;

(3) a statement of EPP goals and objectives;

(4) a copy of the enabling ordinance(s) or resolution(s) for the LEA jurisdictional authority;

(5) a copy of all local solid waste collection, handling, storage, and disposal statutes or ordinances;

(6) a comprehensive list of all types of solid waste facilities and disposal sites, and solid waste handling and collection vehicles within the jurisdiction;

(7) a time task analysis demonstrating the adequacy of staff resources pursuant to 14 CCR Section 18073;

(8) a demonstration of staff technical expertise;

(9) an operating budget demonstrating adequacy of budget resources pursuant to 14 CCR Section 18074;

(10) a detailed staff training procedure pursuant to 14 CCR Section 18075;

(11) a procedure manual for solid waste facility permitting and closure or postclosure;

(12) a procedure manual for random and unannounced inspection and investigation, compliance assurance, enforcement, and hearing panel or hearing officer utilization; and

(13) a procedure manual for disposal site identification, assessment, and corrective actions.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43200–43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsection (a)(2), repealer of subsection (a)(4) and subsection renumbering, new subsection (a)(7), repealer and new subsections (a)(8) and (a)(9) and subsection renumbering, new subsection (a)(11), and repealer and new subsections (a)(12) and (a)(13) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (a) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Amendment filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).
5. Change without regulatory effect amending subsection (a)(12) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18078. Directory of Enforcement Agencies, Hearing Panels, and Hearing Officers.

The board shall maintain a statewide directory of hearing panels, hearing officers and local enforcement agencies as approved and issued certification(s) by the board. The directory shall include a description of the jurisdiction and mailing address of each and shall be open to the public inspection pursuant to Article 4 of Chapter 1 of this division. The board shall promptly respond to inquiries by the public regarding the identity or location of an enforcement agency, hearing panel, or hearing officer.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43200, 43201, 43204, 44800 and 44801, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 18070 to section 18078 filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Relocation and amendment of Form 1000 (including illustration of Designation and Certification Process) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
4. Change without regulatory effect amending section heading and section filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

Article 2.2. LEA Performance Standards, Evaluation Criteria, and Duties and Responsibilities

§ 18080. Scope.

This Article, pursuant to Public Resources Code Section 43214, sets forth the LEA's duties and responsibilities, performance standards, certification maintenance requirements, and board evaluation of LEAs.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43209, 43214, 43215, 43216 and 43219, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Repealer of subsection (a) designator filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18081. LEA Performance Standards and Evaluation Criteria.

(a) In performing its permitting, closure and postclosure, inspection, and enforcement functions, the LEA shall meet its duty requirements and comply with the standards pursuant to Public Resources Code Division 30, Parts 4, 5, and 6; 14 CCR Division 7, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.) and its EPP. Deviation from these standards may result in a performance review by the board pursuant to Public Resources Code Sections 43214, 43215 and 43219, including establishment of LEA compliance schedules or withdrawal of designation and certification(s) approvals. The board's evaluation and decisions will consider the severity of the deviation(s) as related to the potential negative impacts on public health, safety or the environment.

(b) The LEA shall be assessed for compliance with the certification requirements pursuant to Article 2.1 and 2.2 of this Chapter, Public Resources Code Section 43209, and its board–approved EPP.

(c) All facilities and disposal sites within the LEA's jurisdiction shall:

(1) be in compliance with the state minimum standards and either the terms and conditions of the solid waste facility permits, the board–approved final closure and postclosure maintenance plans, have completed postclosure maintenance and monitoring pursuant to 27 CCR Sections 21180 and 21900, or have ceased operation prior to January 1, 1988; and

(2) be permitted, exempted, governed by board–approved final closure and postclosure maintenance plans, or have completed postclosure maintenance and monitoring pursuant to 27 CCR Sections 21180 and 21900; or

(3) be under appropriate enforcement action(s) pursuant to 14 CCR Section 18084 to remedy any violations.

(d) All operations within the LEA's jurisdiction shall:

(1) be in compliance with the state minimum standards, as applicable; and

(2) meet notification requirements as applicable; or

(3) be under appropriate enforcement action(s) pursuant to 14 CCR Section 18084 to remedy any violations.

(e) All LEA's shall retain their certification(s) and designation approvals by maintaining compliance with their board–approved EPP and this Chapter.

(1) The LEA shall provide for, obtain, and maintain the necessary technical, safety and regulatory equipment, clothing and vehicles for field inspectors. The LEA shall identify in its board–approved EPP what constitutes "necessary" for staff safety and field monitoring, measurement, inspection, and enforcement requirements for all its solid waste enforcement duties and responsibilities and its certification(s).

(2) When in the jurisdiction of the EA there exists a publicly owned or operated solid waste facility or disposal site, the local governing body shall maintain an independent hearing panel or hearing officer for permit, enforcement and appeal purposes, as per Section 18060 of this Chapter and Sections 44308 through 44310 of the Public Resources Code.

(3) The LEA/EA shall provide for technical review of corrective actions and postclosure land use pursuant to Sections 43500–43510 and 45000 of the Public Resources Code.

(4) The components of the EPP shall be reviewed and amended by the LEA annually or more frequently as determined by the board to reflect any changes. The amended components shall be submitted to the board for approval.

(f) The LEA/EA shall perform all applicable duties related to the California Environmental Quality Act, Public Resources Code Sections 21000 et. seq.

NOTE: Authority cited: Sections 40502, 43020, 43200, 43203 and 43214, Public Resources Code. Reference: Sections 43200–43204, 43207 and 43209, Public Resources Code.

HISTORY

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsections (d)(1), (d)(2) and (d)(4) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsection (a) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Amendment filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
5. Change without regulatory effect amending subsection (e)(2) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18082. LEA Duties and Responsibilities for Permitting and Closure or Postclosure.

(a) The LEA/EA shall implement the solid waste facility permitting regulations pursuant to Public Resources Code Division 30, Parts 4 and 5, 14 CCR Division 7, Chapter 5, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and its EPP, where applicable, as follows:

(1) applications:

(A) verify the submission of required documents, site and personnel information, and fees;

(B) evaluate the application documents for accuracy and conformity to the EPP and the appropriate state standards cited in subsection (a) of this Section;

(C) review for short and long term environmental impacts, damage, and proposed mitigation measures;

(D) decide whether or not to accept the application and proceed with a proposed permit for board approval;

(E) initiate appropriate public notice and comment period; and

(F) submit copies of the above documents, notices, comments, and responses to the board.

(2) proposed permits:

(A) prepare permits with specific conditions for design, operation, and adverse environmental effect, monitoring and mitigation;

(B) submit proposed permits to the board and the applicant;

(C) allow a waiting period for review, concurrence, or objection by the board, and modification by the LEA/EA as required;

(D) issue or deny the issuance of the solid waste facilities permit, upon satisfactory conclusion of the above process; and

(E) the LEA/EA shall act upon applications and plans to generate a proposed solid waste facilities permit within the required regulatory and/or statutory time frames.

(3) closure and postclosure:

(A) pursuant to Public Resources Code Division 30 Parts 4 and 5 and 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and the EPP, the LEA/EA shall require any person owning or operating a solid waste landfill to submit for LEA/EA and board approval the following:

1. plans for the landfill closure and postclosure maintenance;
2. estimates of closure and postclosure maintenance costs; and
3. evidence of financial mechanisms to insure adequate availability of funds.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43200, 43209, 43500–43606, 44001–44017 and 44300, Public Resources Code.

History

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsection (a)(3)(A) filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsections (a) and (a)(3)(A) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Amendment of section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18083. LEA Duties and Responsibilities for Inspections.

(a) Pursuant to Public Resources Code Division 30, Parts 4 and 5, and 14 CCR Division 7, Chapters 3 and 5, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and its EPP, the LEA/EA shall inspect and investigate solid waste collection, handling, and storage, solid waste facilities, operations and disposal sites and equipment to verify compliance with the state minimum standards, solid waste facilities permits, and related state solid waste laws and regulations within their purview for the protection of the environment and the public health and safety. The LEA/EA shall perform these inspections and related duties as required below, and forward inspection reports to the operator and/or owner, and the board within 30 days of the inspection:

(1) weekly, for sites operating on performance standards pursuant to 27 CCR Section 20695;

(2) monthly, for all active and inactive facilities, and for illegal sites and facilities, pending abatement by enforcement action(s);

(3) at the frequency required by the state minimum standards for each type of operation regulated under the EA Notification tier.

(4) quarterly, for closed sites, abandoned sites, and sites exempted pursuant to 27 CCR Section 21565. For closed sites, inspections shall be made until no potential threat exists to public health and safety or the environment. This determination shall be subject to board approval. For the purposes of this subsection, the enumeration, and the workload analysis, a closed site means a site that has ceased accepting waste and, should be closed, is undergoing closure, or has met applicable closure requirements;

(A) the board may approve an alternate inspection frequency for these sites where such an action will not result in adverse impact on public health and safety and the environment.

(5) if an LEA has been designated as the EA for waste tire facilities or entered into an agreement with the board through a grant program to inspect waste tire facilities, major waste tire facilities shall be inspected annually and minor waste tire facilities shall be inspected at least once every two and a half years pursuant to 14 CCR Section 18443;

(6) upon receipt of a complaint or emergency notification which cannot be resolved off–site;

(7) as necessary, pursuant to the EPP, upon receipt of a solid waste facilities permit application, revision, review, RFI amendment, or closure/postclosure plan; and

(8) pursuant to the EPP, for solid waste handling and collection equipment.

(b) As specified in their EPP pursuant to Section 18077, the LEA/EA shall conduct any of the above inspections, whenever possible, without prior notice to the owner or operator, on randomly selected days, during normal business hours or the site's operating hours.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214, Public Resources Code. Reference: Sections 43200, 43209, 43218, 44100 and 44101, Public Resources Code.

History

1. New section filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Amendment of subsection (a), repealer of subsection (a)(1) and subsection renumbering, new subsection (a)(2), repealer and new subsections (a)(3)–(a)(7), new subsection (b) and amendment of NOTE filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Change without regulatory effect amending subsections (a), (a)(1) and (a)(3) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
4. Amendment filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
5. Amendment filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18084. LEA Duties and Responsibilities for Enforcement.

(a) If during an inspection, investigation, or at any other time, the LEA/EA finds a solid waste facility, operation, or disposal site, is in violation of state minimum standards, the terms and conditions of a permit, or any related state solid waste laws or regulations within their purview, the LEA/EA shall enforce the applicable provisions as required by PRC Division 30, 14 CCR Division 7, Chapter 5, Article 4, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and its EPP. The LEA/EA enforcement actions shall address the following categories of violations:

(1) operational violations, pursuant to 14 CCR Division 7, Chapter 3 and 3.1, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and Division 30 of the Public Resources Code;

(2) emergency violations, pursuant to subsection (1) above which present an imminent threat to public health and safety, or the environment an require immediate action pursuant to Part 5, Division 30 or the Public Resources Code;

(3) permit violations, pursuant to Public Resources Code Division 30 Part 4, Chapter 3 and 14 CCR Division 7, Chapter 5, and 27 CCR, Division 2, Subdivision 1 (§20005 et seq.);

(4) closure and postclosure violations, pursuant to Public Resources Code Division 30, Part 4, Chapter 2, Articles 3 and 4, Part 5, and 27 CCR, Division 2, Subdivision 1 (§20005 et seq.);

(b) LEA/EA enforcement action options include, but are not limited to 14 CCR Division 7 Chapter 5, Article 4, 27 CCR, Division 2, Subdivision 1 (§20005 et seq.), and Public Resources Code Division 30 Parts 4 and 5.

(c) If in the course of an enforcement action, the LEA/EA deems legal counsel to be necessary to achieve enforcement, compliance, relief, or the assessment of monetary penalties through the courts, the LEA/EA shall utilize legal counsel which will be prepared to initiate legal proceedings within 30 days of notification.

(d) If the LEA fails to take appropriate enforcement action to cause an operator to correct violations, or to abate an imminent threat to public health and safety or the environment, the board may take appropriate enforcement action pursuant to PRC sections 45012, 43216.5, and CCR Title 14 section 18350, and also investigate the LEA's designation and/or certification pursuant to PRC section 43214. The board shall apply the following two general criteria to determine if the LEA is taking appropriate enforcement action:

(1) Criterion 1: If the operator is making timely progress toward compliance, then the LEA is taking appropriate action and criterion 2 need not be applied. If the operator is not making timely progress, then criterion 2 shall be applied. In determining whether or not the operator is making timely progress, the board shall consider the following:

(A) The operator's success or lack thereof in accomplishing specific tasks within the timeframes specified in a compliance schedule, or a notice and order.

(B) Information presented by the LEA supporting reasonable deadline extensions in cases where the operator has made a good faith effort to comply, but a delay in compliance has been caused by extenuating circumstances outside the operator's and LEA's control. Examples of extenuating circumstances outside the operator's and LEA's control include acts of God such as inclement weather, earthquakes, etc. Information regarding reasonable deadline extensions due to delays in obtaining discretionary permits or other government agency approvals where the operator's actions or failure to act was not the cause of the delay may also be taken into consideration.

(C) Information presented by the LEA supporting reasonable deadline extensions in cases where the operator has made a good faith effort to correct a landfill gas migration violation, but the assessment of the extent of migration has revealed a problem of a much larger magnitude than originally anticipated, necessitating a larger control system that will take a correspondingly longer length of time to design and install.

(2) Criterion 2: If the LEA is increasing its enforcement response by taking additional action pursuant to its EPP and, if applicable, a previous-

ly issued N&O, then the LEA is considered to be taking appropriate action. If the LEA is not increasing its enforcement response by taking additional action, then the LEA is not considered to be taking appropriate action.

NOTE: Authority cited: Sections 40502, 43020, 43200 and 43214. Public Resources Code. Reference: Sections 43209, 43504, 44016, 44305, 44306, 44310 and 45000–45024, Public Resources Code.

HISTORY

1. New section and Appendix filed 12–17–91; operative 12–17–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 13).
2. Relocation of Form 1000 (including illustration of Designation and Certification Process) from section 18084 to section 18078 filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).
4. Change without regulatory effect amending subsections (a), (a)(1), (a)(3), (a)(4), (b) and (d) filed 3–8–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
5. Amendment of section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

Article 2.3. Board Actions over LEAs

§ 18085. Ground for Board Actions over LEAs.

An LEA's failure to fulfill one or more of the following responsibilities and /or obligations under Public Resources Code Division 30, Part 4, Chapter 2 (the "Solid Waste Facilities Chapter of the Waste Management Act") and/or these implementing regulations shall constitute sufficient ground(s) for any of the board actions set forth in 14 CCR 18086, including but not limited to:

(a) Failure of the LEA to comply with one or more of the Performance Standards referenced in Public Resources Code Section 43214 and/or its implementing regulation, 14 CCR 18081, including but not limited to:

(1) Failure of the LEA to maintain compliance with the certification requirements referenced in 14 CCR 18072–75, including but not limited to technical expertise, adequacy of staff resources, adequacy of budget resources, and training;

(2) Failure of the LEA to enforce facility compliance with one or more of the state minimum standards at solid waste facilities within the jurisdiction of the LEA, as referenced in Public Resources Code Section 43214(c);

(3) Failure of the LEA to maintain compliance with and/or implement one or more of the components of the LEA's Enforcement Program Plan, as referenced in 14 CCR 18077; and

(4) Failure of the LEA to perform all applicable duties related to the California Environmental Quality Control Act.

(b) Failure of the LEA to fulfill one or more of its duties and/or responsibilities as referenced in Public Resources Code Section 43209 and/or its implementing regulations, including but not limited to:

(1) LEA Duties and Responsibilities for Permitting and Closure or Postclosure, as referenced in 14 CCR 18082;

(2) LEA Duties and Responsibilities for Inspections, as referenced in 14 CCR 18083; and

(3) LEA Duties and Responsibilities for Enforcement, as referenced in 14 CCR 18084.

(c) When public health and safety or the environment is threatened, the Board shall, within 10 days of notifying the LEA, become the enforcement agency until another local agency is designated locally, approved and certified by the board pursuant to PRC Section 43214(c).

NOTE: Authority cited: Sections 40502, 43020, 43200, 43203 and 43214, Public Resources Code. Reference: Sections 43200–43209, 43214, 43218, 43500–43606, 44001–44017, 44100, 44101, 44300, 44301 and 44500–45601, Public Resources Code.

HISTORY

1. New article 2.3 (sections 18085–18088) and section filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).

§ 18086. Types of Board Actions over LEAs.

If the Board finds that an LEA is not fulfilling one or more of its responsibilities and/or obligations under Public Resources Code Division 30, Part 4, Chapter 2 (the "Solid Waste Facilities Chapter of the Waste Management Act") and/or these implementing regulations, then the Board, in accordance with Public Resources Code Section 43215 and 43216.5, may take one or more of the following actions:

(a) Assume responsibility for specified LEA duties by partially or fully decertifying an LEA, either permanently or through a temporary suspension. Such an assumption of responsibility shall only extend to the LEA duties so specified by the board. The board may charge for operations pursuant to PRC 43212(a) while performing enforcement agency duties.

(b) Conduct more frequent inspections and evaluations within an LEA's jurisdiction.

(c) Establish a schedule and probationary period for improved performance by an LEA, and/or call for the submission of an evaluation workplan.

(d) Withdrawal of the Board's approval of the local governing body's designation of the LEA.

(e) Implement any other measures which may be determined by the Board to be necessary to improve LEA compliance.

NOTE: Authority cited: Sections 40502, 43020, 43200, 43214, 43215 and 43216.5, Public Resources Code. Reference: Sections 40500–40510 and 43200–43219, Public Resources Code.

HISTORY

1. New section filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).

§ 18087. Process for Board Actions over LEAs.

(a) Notice: Notice of the hearing shall be sent by first–class mail and deposited in the mail at least thirty (30) days prior to the hearing. The notice shall be sent to the LEA's most current address as specified in the completed Form CIWMB 1000 "Notice of Designation of Local Agency" currently on file with the Board. If written notice has been provided the Board that the LEA is represented by an attorney in the proceeding, the notice of the hearing shall additionally be mailed to such attorney.

(b) Public Hearing: The hearing shall be open to the public. The Chair or other presiding officer may provide an opportunity during the hearing for nonevidentiary public comment relevant to the matter being heard by the Board. The Chair or other presiding officer may impose reasonable limitations on the number of public speakers commenting, and on the nature and length of the comment period.

(c) Admission of Evidence: A party shall be afforded the opportunity to present evidence and testimony on all relevant issues. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Final Action by the Board: The Board's decision will consider the severity of the deviation(s) as related to the potential negative impacts on public health, safety or the environment. The Board will announce its decision at the conclusion of the hearing. A written decision will be prepared thereafter, which shall include a statement of the factual and legal basis of the decision. A copy of the written decision shall be sent to the LEA in the same manner as set forth in subsection (a), above, within ten (10) days of the conclusion of the hearing.

NOTE: Authority cited: Sections 40502, 43020, 43200, 43214, 43215 and 43216.5, Public Resources Code. Reference: Sections 40500–40510 and 43200–43219, Public Resources Code.

HISTORY

1. New section filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).

§ 18088. Board Acting as Enforcement Agency.

The Board, when acting as the enforcement agency, may enter into agreements or contracts as its discretion with any certified local enforcement agency for the purpose of delegating its enforcement agency duties

within any jurisdiction until a local agency is designated, approved and certified by the Board.

NOTE: Authority cited: Sections 40502, 43020 and 43200, Public Resources Code. Reference: Sections 43216 and 43216.5, Public Resources Code.

HISTORY

1. New section filed 7–25–2002; operative 8–24–2002 (Register 2002, No. 30).

Article 2.3. LEA Grants

§ 18090.0. Purpose and Scope.

The purpose of the LEA Grant Program is to provide grants to LEAs to carry out the solid waste facilities permit and inspection program.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New article 2.3 (sections 18090.0–18094.0) and section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18090.1. Grant Eligibility.

Grants shall be awarded only to LEAs and regional LEAs that are certified pursuant to Article 2.1 of this Chapter. Eligibility for a grant is dependent on Board approval of final accountings for previously awarded LEA Grants.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18090.2. Grant Award.

(a) The total amount of grants made by the Board pursuant to this article shall not exceed, in any one fiscal year, the amount specified by law.

(b) The total grant amount shall be distributed among the applicants on a pro–rata basis with each LEA receiving a Board established base grant, in no event less than $15,000, plus an additional amount based on the population of the jurisdictions served by the LEA and the number of active, permitted solid waste facilities located within those jurisdictions.

(c) Each Regional LEA shall receive a base grant multiplied by the number of counties for which the LEA is responsible, plus an additional amount based on the population of the jurisdictions served by the Regional LEA and the number of active, permitted solid waste facilities located within those jurisdictions.

(d) All population statistics will be obtained through the most current annually revised Department of Finance Report on Population Estimates for California Cities and Counties.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18090.3. Use of LEA Grant Funds.

(a) LEA grant funds shall be used exclusively for the purpose of carrying out the approved solid waste facilities permit and inspection program. Any unauthorized use of LEA grant funds may result in the termination of the grant agreement, repayment of funds and/or return of all unused portions of the grant to the Board.

(b) Any unused portions of an LEA grant awarded pursuant to this article for a designated fiscal year shall be returned to the Board.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18091.1. Grant Application.

(a) Applications for LEA grants will be accepted by mail during the time period specified in the application package. Applications sent by facsimile transmission or hand–delivered applications will not be accepted.

(b) An LEA or Regional LEA that is eligible for a grant award pursuant to Section 18090.1 of this Chapter, shall submit a grant application to the Board. The purpose of the grant application is to identify the local agency positions authorized to administer the grant program and to provide the Board the basis on which to evaluate appropriate grant use. The grant application shall include the following:

(1) A Statement of Use describing the program's goals or objectives and stating how the grant funds will be used to implement the program;

(2) A Budget Report listing all proposed grant expenditures, which may include the cost of staffing, third party contracts, training, travel and purchase of equipment or materials; and

(3) A certified copy of an approved resolution from each applicant's governing body authorizing submittal of the application and identifying the position of the individual who is authorized to execute all agreements and other documents necessary to carry out the program.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18092.0. Review of Grant Application.

(a) Board staff shall review each grant application to verify that it is complete and satisfies the criteria contained within Section 18091.1 of this Chapter.

(b) Board staff may request additional information related to the grant application required pursuant to Section 18091.1 of this Chapter. The applicant will have ten (10) working days, or an additional time period specified by Board staff to submit the requested information.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18093.0. Grant Requirements.

(a) The grant recipient and the Board shall enter into a written grant agreement that defines the grant term; contains a description of the approved program; and ensures compliance with the conditions specified in this Article.

(b) The grant recipient shall submit a final report on or before one hundred–twenty (120) days following completion of the grant cycle. The report shall include any amendments to the grant program; provide a description of the implementation of the program; and, provide detailed expenditure information that enables the Board to determine the specific use of all grant funds.

(c) Grant recipients shall comply with all applicable federal, state and local laws, ordinances, regulations and permits.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18093.1. Payment of Grant Funds.

(a) Grants will be awarded annually each year subject to the availability of funds.

(b) Grant recipients will be advanced ninety percent (90%) of their grant funds. All grant funds must be placed in an interest–bearing account with a fully insured financial institution. The grantee shall track interest accrued on the advance payment. Interest earned from the account shall be used only for eligible grant related expenses or returned to the Board.

(c) The Board will withhold ten percent (10%) of the total grant funds until satisfactory completion of the project and approval of grantee's final report and payment request.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

§ 18094.0. Auditing.

(a) The Board, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant. Grant recipients shall maintain such re-

cords for possible audit for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated, or until resolution of issues which may arise as a result of any audit, litigation, or claim negotiation.

(b) Grant recipients shall maintain an accounting system which utilizes generally accepted accounting principles and practices. In addition to accounting records, all source documents associated with the accounting records shall be maintained. Source documents include, but are not limited to, bid summaries, contracts with the grant recipient, change orders showing approval by a city or county engineer, purchase orders, invoices, paid warrants, time sheets, labor distribution reports and payroll registers.

NOTE: Authority cited: Section 43231, Public Resources Code. Reference: Sections 43230 and 43232, Public Resources Code.

HISTORY

1. New section filed 8–26–2002; operative 9–25–2002 (Register 2002, No. 35).

Article 3.0. Regulatory Tier Requirements

§ 18100. Scope.

(a) This Article sets forth the method of application for a tiered solid waste facilities permit, procedures for review and action on an application package, and other requirements associated with regulatory tiers. This Article also includes provisions regarding permit maintenance following issuance and other requirements associated with solid waste handling operations. Similar provisions regarding a full solid waste facilities permit can be found in Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2.0–3.2 of the California Code of Regulations (commencing with section 21570).

(b) The provisions of this Article shall apply only to those operations and facilities as specified in the minimum standards set forth in Chapters 3.0 or 3.1 of Division 7 of this Title.

(c) The submittal of an enforcement agency notification (in accordance with section 18103) or issuance of a tiered permit supersedes any previously submitted enforcement agency notification or issued tiered permit.

(d) Specific provisions relating to the different types of regulatory tiers may be found below as follows:

(1)	Excluded	section 18102
(2)	Notification of Enforcement Agency	sections 18103 – 18103.3
(3)	Registration Permit	sections 18104 – 18104.9; and
(4)	Standardized Permit	sections 18105 – 18105.11.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New article 3.0 (sections 18100–18105.11) and section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect repealing first paragraph filed 10–26–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 43).
3. Amendment of section and NOTE filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 18101. Definitions.

Unless incorporated by reference or by statute, the definitions in this Article govern only the construction of this Article.

(a) "Acceptance for filing" means the enforcement agency has determined that the application is complete and correct and the specified permit action time frames contained in this Article commence.

(b) "Annual loading" is the maximum amount of waste/material to be handled by an operation annually.

(c) "Change in operation" means any change to a facility's operations noted in the application, including, but not limited to, change in facility description, change in materials handled, change in quantity of material handled, or change in operating hours in which the operator intends to operate outside of normal business hours.

(d) "Complete" means all information required as part of a solid waste facilities permit application submitted pursuant to this Article has been provided.

(e) "Correct" means all information provided by the applicant as part of a solid waste facilities permit application submitted pursuant to this Article is accurate, exact, and fully provides the applicable filing requirement information for the solid waste facility for which a permit is being sought.

(f) A "full permit" is a solid waste facilities permit obtained pursuant to procedures set forth in Article 3.1 of this Chapter.

(g) A "location map" means a map showing the general location of the operation at a scale size minimally equivalent to 1:24,000 USGS topological quadrangle.

(h) "Operation" means the receipt and processing of solid waste.

(i) "Peak loading" is the largest projected waste/material quantity to be received by an operation on any day of operation.

(j) "Regulatory tier" is a type of regulatory oversight pursuant to procedures set forth in this Article and Article 3.1. Tier types include: excluded, enforcement agency notification, registration permit, standardized permit, and full permit.

(k) A "site map" means a map showing the existing or planned layout of the operations, including, but not limited to, operations areas and their relationships to property boundaries, buffer zones, adjacent land uses, proposed drainage systems, any excavation areas, site access, and any other portions of the site dedicated to a specific use. The site map shall be at a scale size of 1″ = 200′, and indicate the zoning within 1000′, of the facility. Where feasible, structures located on adjacent properties should be identified on the site map or location and distances to the nearest structures shall be included.

(l) A "tiered permit" is a type of solid waste facilities permit obtained pursuant to procedures set forth in Articles 3.0 and 3.1 of this Chapter. A tiered permit is a solid waste facilities permit other than a full permit with reduced application and permit processing requirements.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18102. Excluded Solid Waste Handling.

Operators of excluded operations designated by the minimum standards set forth in Division 7 of this Title are not required to notify the enforcement agency or submit an application for a solid waste facilities permit. Nothing in this section precludes the enforcement agency or the board from inspecting an excluded operation to verify that the operation is being conducted in a manner that qualifies as an excluded operation or taking any appropriate enforcement action.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43020, 44100(a), 44101(a) and 45200, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18103. Enforcement Agency Notification.

(a) The enforcement agency notification provisions of this Article shall apply only to operations as specified in the minimum standards set forth in Chapters 3 or 3.1 of Division 7 of this Title.

(b) Sections 18103.1 through 18103.3 establish the requirements for compliance with enforcement agency notification as follows:

(1)	Filing Requirements	section 18103.1;
(2)	Record Keeping Requirements	section 18103.2; and
(3)	Termination of Operation	section 18103.3.

(c) Operations authorized to use the enforcement agency notification tier are required to operate in accordance with the minimum standards set forth in Chapters 3 or 3.1 of Division 7 applicable to that operation.

(d) Nothing in this section precludes the enforcement agency or the board from the following: inspecting an operation to verify that the operation is being conducted in a manner that qualifies for the enforcement agency notification tier; inspecting to verify that the operation is in compliance with the minimum standards; or, taking any appropriate enforcement action, including the use of a 'notice and order.'

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43020, 44100(a), 44101(a) and 45200, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18103.1. Filing Requirements.

(a) Any operator proposing to engage in solid waste handling pursuant to an enforcement agency notification shall notify the enforcement agency of its intent to operate in writing prior to commencing operations. This written notification shall be legible and include the following information:

(1) The name, address, and phone number of the proposed operation; the name, address, and phone number where the operator can be contacted if these differ from the operation site; and, the name, address, and phone number of the owner if these differ from the operator.

(2) The section in Chapters 3 or 3.1 of Division 7 of this Title authorizing eligibility for this tier and a description of the facility's operations, including but not limited to, volume and hours of wastes/material handled, peak and annual loading, and hours of operation.

(3) Documentation that the operator has notified the local planning department with jurisdiction over the site of its intent to commence operations. Documentation may include, proof of compliance with CEQA, correspondence from the local planning department that compliance with the California Environmental Quality Act is not required for the operation to obtain local land use approval or written notice to the local planning department of the operator's intent to commence operations.

(4) A statement by the owner and operator certifying under penalty of perjury that the information which they have provided is true and accurate to the best of their knowledge and belief.

(b) The notification shall be mailed to the enforcement agency "return receipt requested."

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 43020, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Amendment filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
3. Change without regulatory effect amending subsections (a) and (b) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 18103.2. Record Keeping Requirements.

The enforcement agency shall retain the notification received pursuant to section 18103.1 which shall be publicly available during normal business hours. The enforcement agency shall forward a copy of the notification to the board within five days of receipt. The enforcement agency shall retain a copy of the notification for a minimum of one year after the facility is known to have ceased operations.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 43020, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18103.3. Termination of Operation.

Any person intending to cease operations shall notify the enforcement agency in writing at least 15 days prior to the cessation of operations.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 43020, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18104. Registration Permit.

(a) The registration permit provisions of this Article shall apply only to solid waste facilities as specified in the minimum standards set forth in Chapters 3 or 3.1 of Division 7 of this Title.

(b) A registration permit shall be deemed to incorporated by reference, as terms and conditions of the permit, all minimum standards applicable to it, as set forth in Chapters 3 or 3.1, of Division 7.

(c) Sections 18104.1 through 18104.9 establish the requirements for a registration permit as follows:

(1) Filing Requirements	section 18104.1;
(2) Enforcement Agency Processing Requirements	section 18104.2;
(3) Record Keeping Requirements	section 18104.3;
(4) Completeness Appeal	section 18104.4;
(5) Change in Operation	section 18104.5;
(6) Change in Owner	section 18104.6;
(7) Permit Review & Reissuance	section 18104.7;
(8) Suspend/Revoke	section 18104.8, and
(9) Voiding of a Registration Permit	section 18104.9.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021, 43000–45802 and 50000–50002, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18104.1. Filing Requirements.

Any operator proposing to operate a solid waste facility pursuant to a registration permit shall file an application using form CIWMB 83 "Registration Permit Application" (rev. 12/96), which is incorporated herein by reference, with the enforcement agency. The application shall be accompanied by the fee specified by the enforcement agency pursuant to Public Resources Code Section 44006(c). (See Appendix A.) This application shall contain the following information:

(a) The name and address of the enforcement agency, and the section in Chapters 3 or 3.1 of Division 7 of this Title authorizing eligibility for this tier.

(b) General description of the facility including, but not limited to name, location, site map, and location map.

(c) Facility information, including, but not limited to, volume and type of waste/material; handled, peak and annual loading, hours of operation, traffic, facility size, site capacity, and operating area.

(d) Operator information, including identification of the land owner, his/her address and telephone number; identification of the facility operator, his/her address and telephone number; and the address(es) at which process may be served upon the operator and owner.

(e) Conformance finding information as follows:

(1) Until a countywide or regional agency integrated waste management plan has been approved by the board, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code Section 50000; and that the facility is consistent with the city or county General Plan.

(2) After a countywide or regional agency integrated waste management plan has been approved by the board, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction to be identified in any of these elements pursuant to Public Resources Code Section 50001.

(f) The owner and operator shall each certify under penalty of perjury that the information which they have provided is true and accurate to the best of their knowledge and belief.

(g) Evidence that the application form was provided to the director of the local agency that oversees local use planning for the jurisdiction in which the site is located.

(h) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021, 43000–45802 and 50000–50002, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending first paragraph filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Change without regulatory effect amending first paragraph and subsections (e)(1) and (f) filed 2–6–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
4. Amendment of first paragraph and subsections (e)(1)–(2) and new subsections (g) and (h) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18104.2. Enforcement Agency Processing Requirements.

(a) Upon receipt of an application filed pursuant to Section 18104.1, the enforcement agency shall mark the application with the date of receipt.

(b) The enforcement agency shall notify every person who has submitted a written request to be notified of any application.

(c) Within 30 days of receipt, the enforcement agency shall review the application to determine whether it meets the requirements of Section 18104.1.

(d) If the enforcement agency finds the application is complete and correct pursuant to Section 18104.1, it shall be accepted for filing and stamped with the date and time of acceptance.

(e) The enforcement agency shall provide notice pursuant to Title 27 Section 21660.3 prior to issuance of the solid waste facilities permit.

(f) When an application is accepted for filing, the enforcement agency shall issue a registration permit by mailing an executed form CIWMB 81 "Registration Permit" (rev. 1/95), which is incorporated herein by reference, to the applicant. Form CIWMB 81, along with a copy of the accepted application, must be mailed to the applicant within five days of filing. (See Appendix A.)

(g) The enforcement agency shall provide a copy of the registration permit to the board and to any person who has so requested in writing.

(h) If the enforcement agency finds that the application is not complete and correct pursuant to 18104.1, it shall not be accepted for filing. A copy of the rejected application accompanied by an explanation shall be mailed to the applicant within five days.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending subsection (e) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Amendment of subsections (a) and (c), new subsection (e) and subsection relettering filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18104.3. Record Keeping Requirements.

(a) The enforcement agency shall maintain a current list of all pending applications at its offices. The list shall be publicly available during normal business hours.

(b) Written public comments on an application shall be retained by the enforcement agency.

(c) The enforcement agency shall forward copies of any written public comments received on an application to the board with the registration permit submitted pursuant to section 18104.2(f).

(d) Subsequent to the transmittal of the registration permit to the board, the enforcement agency shall within five days of receipt provide a copy of any additional written public comments to the board unless the comment clearly states that a copy has already been provided to the board.

(e) If an application is denied, the enforcement agency shall retain public comments received on that application for a period of 2 years. If a previously denied permit is approved, all comments received shall be forwarded to the board with the copy of the registration permit submitted under subsection (c) above.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18104.4. Completeness Appeal.

If an application is determined to be incomplete, the applicant may appeal that determination to the enforcement agency within 15 days of the date that notification was received. Such an appeal must be in writing and specify the grounds for the appeal. A final written determination on the appeal shall be made by the hearing panel or hearing officer designated pursuant to section 44800 of the Public Resources Code, no later than 60 days after receipt of the applicant's appeal.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending section filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18104.5. Change in Operation.

A new registration permit application shall be submitted when an operator proposes a change in operation or to transfer his/her permit for the same operation to another operator, or if the enforcement agency determines that a change in facility operations has occurred.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18104.6. Change in Owner.

(a) An operator shall notify the enforcement agency in writing if a person, who owns property on which the solid waste facility is located, is encumbering, selling, transferring, or conveying the property, or part thereof; or allowing the property, or part thereof, to be encumbered, sold, transferred, or conveyed. The operator shall notify the enforcement agency at least 15 days prior to such action by the owner, or within 7 days of receiving notice of such action by the owner, whichever comes first. The enforcement agency shall transmit a copy of the notification to the board within five days of receipt.

(b) Any information provided pursuant to subdivision (a) of this section shall not be a matter of public record and shall be considered confidential until such time as the owner's encumbering, selling, transferring, or conveying of the property, occurs.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 6255, Government Code; and Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18104.7. Permit Review & Reissuance.

(a) Every registration permit shall be reviewed at least once every five years from the date of issuance or reissuance.

(b) The enforcement agency shall notify the operator 60 days before the registration permit is due for review.

(c) No fewer than 35 days before the registration permit is due for review, the operator shall submit either a certification that the information

contained in the controlling registration permit is current, or shall file a new application pursuant to Section 18104.1.

(d) If an operator files a certification as specified in subsection (c) above or a new application pursuant to Section 18104.1, the enforcement agency shall follow the procedures set forth in Sections 18104.2 and 18104.3.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 44015, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Amendment of subsections (b)–(d) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18104.8. Suspend/Revoke.

Any registration permit may be suspended or revoked by the enforcement agency for cause pursuant to section 44305 or 44306 of the Public Resources Code. Any such action shall be undertaken by the enforcement agency using the procedures set forth in Article 2, Chapter 4 of the Public Resources Code (section 44305 *et seq.*).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 44305–44310, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending section and NOTE filed 6–21–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 25).

§ 18104.9. Voiding of a Registration Permit.

Every registration permit shall be void 30 days after cessation of operations. Any operator who intends to cease operations shall notify the enforcement agency of his/her last proposed date of operation at least 15 days in advance. The enforcement agency shall forward a copy of this notification to the board within 7 days. "Cessation of operations" does not include temporary operational shutdowns which are seasonal or intermittent in nature.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105. Standardized Permit.

(a) The standardized permit provisions of this Article shall apply only to solid waste facilities as specified in the minimum standards set forth in Chapters 3 or 3.1 of Division 7 of the Title.

(b) A standardized permit obtained pursuant to this Article shall contain only those terms and conditions applicable to the type of facility receiving it as set out in the minimum standards for that type of facility.

(c) Sections 18105.1 through 18105.11 establish the requirements for a standardized permit as follows:

(1) Filing Requirements	section 18105.1;
(2) Enforcement Agency Processing Requirements	section 18105.2;
(3) Record keeping Requirements	section 18105.3;
(4) Completeness Appeal	section 18105.4;
(5) Board Processing Requirements	section 18105.5;
(6) Appeal of Decision	section 18105.6;
(7) Change in Operation	section 18105.7;
(8) Change in Owner	section 18105.8;
(9) Permit Review	section 18105.9;
(10) Suspend/Revoke	section 18105.10; and
(11) Voiding of a Standardized Permit	section 18105.11.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105.1. Filing Requirements.

Any operator proposing to operate a solid waste facility eligible for a standardized permit shall file an application in duplicate with the enforcement agency accompanied by the fee specified by the enforcement agency pursuant to Public Resources Code Section 44006(c). This application shall contain the following information:

(a) The name and address of the enforcement agency, and the section in Chapters 3 or 3.1 of Division 7 of this Title authorizing eligibility for this tier.

(b) General description of the facility including, but not limited to name, location, site map, and location map.

(c) Facility information, including, but not limited to, volume and types of waste/material handled, peak and annual loading, hours of operation, traffic, facility size, site capacity, and operating area.

(d) Operator information, including identification of the land owner, his/her address and telephone number; identification of the facility operator, his/her address and telephone number; and the address(es) at which process may be served upon the operator and owner.

(e) A Report of Facility Information that contains all of the information required by the applicable section(s) of Article 3.2, Chapter 5, of this Division.

(f) One of the following:

(1) Evidence that there has been compliance with the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, regarding the facility; or,

(2) Information on the status of the application's compliance with the California Environmental Quality Act regarding the facility. Once there has been compliance with the California Environmental Quality Act regarding the facility, evidence of compliance shall be submitted to the enforcement agency.

(g) Conformance finding information as follows:

(1) Until a countywide or regional agency integrated waste management plan has been approved by the board, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code Section 50000; and that the facility is consistent with the city or county General Plan.

(2) After a countywide or regional agency integrated waste management plan has been approved by the board, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction in which it is located; or, that the facility is not required to be identified in any of these elements pursuant Public Resources Code Section 50001.

(h) The owner and operator shall each certify under penalty of perjury that the information provided is true and accurate to the best of their knowledge and belief.

(i) Evidence that the application form was provided to the director of the local agency that oversees local use planning for jurisdiction in which the site is located.

(j) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021, 43000–45802 and 50000–50002, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

2. Change without regulatory effect amending subsections (c), (d) and (g)(1)–(2) filed 2–6–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
3. Amendment of first paragraph and subsections (g)(1)–(2) and new subsections (i) and (j) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18105.2. Enforcement Agency Processing Requirements.

(a) Upon receipt of an application filed pursuant to Section 18105.1, the enforcement agency shall mark the application with the date of receipt.

(b) The enforcement agency shall notify every person who has submitted a written request to be notified of any application.

(c) Within 30 days of receipt, the enforcement agency shall review the application to determine whether it meets the requirements of Section 18105.1.

(d) If the enforcement agency finds the application is complete and correct pursuant to 18105.1(a–e) and (g–h), it shall be accepted for filing.

(e) The application shall be stamped with the date and time of acceptance.

(f) If the enforcement agency finds that the application is not complete and correct pursuant to 18105.1(a–e) and (g–h), it shall not be accepted for filing. A copy of the rejected application accompanied by explanation shall be mailed to the applicant within five days.

(g) Within fifteen days of acceptance of an application for filing:

(1) The enforcement agency shall evaluate the information provided in the application and the proposed facility to determine whether or not the facility will be able to operate in compliance with the applicable minimum standards and standardized solid waste facilities permit terms and conditions.

(2) The enforcement agency shall provide notice pursuant to Title 27 Section 21660.3.

(3) If the enforcement agency finds that the application and facility meet the requirements set forth in subdivision (g)(1) of this section then the enforcement agency shall forward the proposed standardized permit, application package, and the results of any analysis to the board. The enforcement agency shall further provide the applicant with a copy of the proposed standardized permit submitted to the board. In addition, the enforcement agency shall provide a copy of the proposed standardized permit to any person who has so requested in writing.

(4) If the enforcement agency finds that the application or facility do not meet the requirements set forth in subdivision (g)(1) of this section, the enforcement agency shall reject the application. A copy of the rejected application accompanied by an explanation shall be mailed to the applicant.

(h) If evidence of compliance with the California Environmental Quality Act, as required by Section 18105.1(f), has not been submitted within 15 days of acceptance of the application as complete, then the decision required by Section 18105.2(g) shall be held in abeyance until compliance with this requirements has been demonstrated. Unless waived by the applicant pursuant to Public Resources Code Section 44008, if evidence of compliance with the California Environmental Quality Act has not been submitted within 120 days of the application's acceptance for filing, the enforcement agency shall reject the application and not issue the standardized permit.

(i) Once the board has concurred in the issuance of the proposed standardized permit, pursuant to Section 18105.5, the enforcement agency shall issue the standardized permit.

(j) If the board objects to the proposed standardized permit, the enforcement agency shall notify the applicant in writing of the board's decision, and the reasons for that decision, within five days of receipt of that decision.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Amendment of subsections (a), (c) and (g)(1), new subsection (g)(2), subsection renumbering and amendment of subsections (h)–(i) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18105.3. Record Keeping Requirements.

(a) The enforcement agency shall maintain a current list of all pending applications at its offices. The list shall be publicly available during normal business hours.

(b) Written public comments on an application shall be retained by the enforcement agency.

(c) The enforcement agency shall forward copies of any written public comments received on a pending application to the board with the proposed standardized permit submitted pursuant to section 18105.2(g).

(d) Subsequent to the transmittal of the proposed standardized permit, the enforcement agency shall within five days of receipt provide a copy of any additional written public comments to the board, unless the comment clearly states that a copy has already been provided to the board.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105.4. Completeness Appeal.

If an application is determined to be incomplete, the applicant may appeal that determination to the enforcement agency within 15 days of the date that notification was received. Such an appeal must be in writing and specify the grounds for the appeal. A final written determination on the appeal shall be made by the hearing panel or hearing officer designated pursuant to section 44800 of the Public Resources Code, no later than 60 days after receipt of the applicant's appeal.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending section filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18105.5. Board Processing Requirements.

(a) The board shall mark the proposed standardized permit with the date of receipt.

(b) The board shall evaluate the application package and the proposed standardized permit for compliance with the requirements set forth by section 18105.1 and 18105.2(g).

(c) Within 30 days of receipt of a proposed standardized permit, the board shall either concur in or object to the issuance of the proposed standardized permit.

(d) If the proposed standardized permit contains terms and conditions not authorized by the minimum standards and the permit is otherwise in conformance with these regulations, any additional unauthorized terms and conditions shall be stricken. The board shall concur in the edited standardized permit.

(e) Within 7 days of the decision to concur in or object to a proposed standardized permit, the board shall notify the enforcement agency of its determination in writing. If the board objects, the reasons for the objection shall be provided to the enforcement agency.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105.6. Appeal of Decision.

(a) Any applicant may appeal the decision of the enforcement agency taken pursuant to section 18105.2(g)(3) or of the Board taken pursuant to section 18105.5 to the enforcement agency within 15 days of the date

that the decision was received. Such an appeal must be in writing and specify the grounds for the appeal. A final written determination on the appeal shall be made by the hearing panel or hearing officer designated pursuant to section 44800 of the Public Resources Code, no later than 60 days after receipt of the applicant's appeal.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending subsection (a) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18105.7. Change in Operation.

A new standardized permit application shall be submitted when an operator proposes a change in operation or to transfer his/her permit for the same operation to another operator, or if the enforcement agency determines that a change in facility operations has occurred.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105.8. Change in Owner.

(a) An operator shall notify the enforcement agency in writing if a person, who owns property on which the solid waste facility is located, is encumbering, selling, transferring, or conveying the property, or part thereof; or allowing the property, or part thereof, to be encumbered, sold, transferred, or conveyed. The operator shall notify the enforcement agency at least 15 days prior to such action by the owner, or within 7 days of receiving notice of such action by the owner, whichever comes first. The enforcement agency shall transmit a copy of the notification to the board within five days of receipt.

(b) Any information provided pursuant to subdivision (a) of this section shall not be a matter of public record and shall be considered confidential until such time as the owner's encumbering, selling, transferring, or conveying of the property, occurs.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Section 6255, Government Code; and Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).

§ 18105.9. Permit Review and Reissuance.

(a) Every standardized permit shall be reviewed at least once every five years from the date of issuance or reissuance.

(b) The enforcement agency shall notify the operator 60 days before the standardized permit is due for review.

(c) No fewer than 35 days before the standardized permit is due for review, the operator shall submit either a certification that the information contained in the controlling solid waste facilities permit is current, or shall file a new application pursuant to Section 18105.1.

(d) If an operator files a certification as specified in subsection (c) above or a new application pursuant to Section 18105.1, the enforcement agency shall follow the procedures set forth in Sections 18105.2 and 18105.3 and the board shall follow the procedures set forth in Section 18105.5.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 44015, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending subsection (d) filed 6–21–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 25).
3. Amendment of subsections (b)–(d) filed 3–14–2007; operative 4–13–2007 (Register 2007, No. 11).

§ 18105.10. Suspend/Revoke.

Any standardized permit may be suspended or revoked by the enforcement agency for cause pursuant to section 44305 or 44306 of the Public Resources Code. Any such action shall be undertaken by the enforcement agency using the procedures set forth in Article 2, Chapter 4 of the Public Resources Code (section 44305 *et seq.*).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 44305–44310, Public Resources Code.

HISTORY

1. New section filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect amending section and NOTE filed 6–21–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 25).

§ 18105.11. Voiding of a Standardized Permit.

Every standardized permit shall be void 30 days after cessation of operations. Any operator who intends to cease operations shall notify the enforcement agency of his/her last proposed date of operation at least 15 days in advance. The enforcement agency shall forward a copy of this notification to the board within 7 days. "Cessation of operations" does not include temporary operational shutdowns which are seasonal or intermittent in nature.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New section and forms CIWMB 81 and 83 filed 3–1–95; operative when the minimum standards to be set forth in Chapters 3.0 or 3.1 of Division 7 of this Title are filed with the Secretary of State and become effective and operative (Register 95, No. 9).
2. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

Article 3.1. Application for Solid Waste Facilities Permits

§ 18200. Scope.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43020, 43021 and 43000–45802, Public Resources Code.

HISTORY

1. New article 3 (sections 18200–18217, not consecutive) filed 5–27–77; designated effective 7–1–77 (Register 77, No. 22).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Amendment of section and NOTE filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18200.1. Definitions.

NOTE: Authority cited: Sections 40502 and 43020. Reference: Sections 44001–44017, 44100–44101, 44300–44301, 44500–44503 and 44813–44816, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18201. Form of Application and Supporting Documents (Application Package).

NOTE: Authority cited: Sections 40002, 40502 and 43020, Public Resources Code. Reference: Sections 44001–44017, 44100–44101, 44300–44301, 44500–44503, and 44813–44816, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment filed 7–15–93; operative 7–15–93 (Register 93, No. 29).

3. Change without regulatory effect repealing subsection (d)(1)(F) and relettering subsection filed 1-18-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 3).
4. Change without regulatory effect repealing subsection (d)(1)(E) and subsection relettering filed 2-6-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
5. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 18202. Amendments to Application.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44001-44006, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
3. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 18203. Filing of Application and Transmittal of Copies.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44001-44006 and 44007-44010, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
3. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 18204. Public Notice and Comment.

HISTORY

1. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).
2. Editorial correction repealing section and adding HISTORY (Register 97, No. 26).

§ 18205. Investigation of Application.

§ 18206. Environmental Review.

§ 18207. Proposed Permit; Board Review.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44007-44010 and 44014, Public Resources Code.

HISTORY

1. New subsection (c) filed 10-31-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 45).
2. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Amendment of subsection (a) and new subsection (d) filed 7-15-93; operative 7-15-93 (Register 93, No. 29).
4. Repealer filed 6-18-97; operative 7-18-97 (Register 97, No. 25).

§ 18208. Issuance of Permit; Final Environmental Determination.

(a) Upon compliance with the Act and this article, and upon the concurrence of the board, the enforcement agency may make findings and issue the permit as provided in subsection (a) of Public Resources Code section 44014. The permit shall specify the person authorized to operate the facility and the boundaries of the facility. The permit shall contain such conditions as are necessary to specify a design and operation for which the applicant has demonstrated in the proceedings before the enforcement agency and the board the ability to control the adverse environmental effects of the facility.

(1) As used herein, "design" means the layout of the facility (including numbers and types of fixed structures), total volumetric capacity of a disposal site or total throughput rate of a transfer/processing station, transformation facility, or composting facility, vehicular traffic flow, and patterns surrounding and within the facility, proposed contouring, and other factors that may be considered a part of the facility's physical configuration.

(2) As used herein, "operation" means the procedures, personnel, and equipment utilized to receive, handle and dispose of solid wastes and to control the effects of the facility on the environment.

(b) (Reserved)

(c) Copies of the permit (including conditions specified therein), findings, and any document setting forth the enforcement agency's final environmental determination shall be provided the board and any person who has requested in writing that such copies be provided.

Comment: In filing an application for a new permit or permit revision, the applicant will be required to specify the proposed design and operation of the facility, to describe any anticipated environmental consequences of the specified design and operation, and to propose measures to minimize and mitigate any adverse environmental effects. The permit that is issued would specify the measures found by the agency to be necessary, for a facility of given design and operation, to satisfy the requirements of the Act for protection of the environment. Accordingly, the permit would limit the facility to the design and operation that corresponds to those measures. Any significant change in design or operation would require revision of the permit. See section 18211. In order to avoid the need to revise a permit for each minor change in operation, the conditions should be drafted to accommodate fluctuations without requiring a permit revision, so long as such changes do not necessitate additional measures to control their environmental effects.

NOTE: Authority cited: Sections 40502 and 43200, Public Resources Code. Reference: Sections 44012 and 44014, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 8-3-77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11-1-77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Amendment of subsection (a)(1) and NOTE filed 7-15-93; operative 7-15-93 (Register 93, No. 29).

§ 18209. Denial of Permit.

(a) The enforcement agency shall deny the permit when any of the following occur:

(1) The enforcement agency determines that the proposed facility is not consistent with the county solid waste management plan or cannot conform to the state standards.

(2) The Board has objected to the proposed permit and either:

(A) there are less than 45 days remaining before the statutory deadline for action on the application and the applicant declines to waive the deadline; or

(B) the enforcement agency determines that it will be impossible to propose a permit that will be mutually satisfactory to the enforcement agency, the board, and the applicant. The enforcement agency may deny the permit under any other circumstances provided by law.

(b) Upon denial of a permit, the enforcement agency shall give written notice of the denial to the applicant, the board, and any other person who has requested in writing that such notice be given. Notice to the applicant shall be accompanied by a form request for a hearing, which the applicant may use to obtain a hearing before the hearing panel or hearing officer.

(c) An applicant who desires a hearing on the denial of a permit shall file with the enforcement agency a written request for a hearing. The enforcement agency shall provide the board with copies of the request, the statement of issues, and the notice of defense within five business days of service upon the applicant.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44007-44017 and 44300, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5-17-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Change without regulatory effect amending subsection (b) filed 10-17-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18210. Notice of Operation Prior to August 15, 1977.

NOTE: (Reference: Gov. Code Sections 66796.30, 66796.32-66796.34, 66796.45-66796.46)

HISTORY

1. Change without regulatory effect repealing Section 18210 filed 8-17-89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35). For prior history, see Register 77, No. 22.

§ 18211. Application for Revision of a Permit.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44001-44006 and 44007-44017, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18212. Reinstatement of Suspended and Revoked Permits.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44500–44503 and 44817, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18213. Review of Permits.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44011, Public Resources Code.

HISTORY

1. Amendment of subsection (c) filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Amendment of subsections (a), (c) and Comment filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

[The next page is 805.]

§ 18215. Exemptions from Requirement of a Permit.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 8–3–77 as an emergency; effective thirtieth day thereafter (Register 77, No. 32).
2. New subsection (b)(8) filed 10–31–77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 45).
3. Certificate of Compliance as to 8–3–77 filing filed 11–1–77 (Register 77, No. 45).
4. Change without regulatory effect of subsections (b)(2) and (b)(4) filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
5. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18216. Notice of Change of Address.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44500–44503, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18217. Notice of Change of Ownership of Property.

NOTE: Reference: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44001–44006, Public Resources Code.

HISTORY

1. Amendment filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 3.1.1. Temporary Solid Waste Facilities Permits

§ 18218. Scope and Applicability.

(a) The Legislature has determined that a substantial number of persons are carrying out solid waste handling and composting activities in violation of current law due to changing trends in local solid waste handling and collection practices and state regulation of solid waste handling and composting activities. The Legislature has directed that the California Integrated Waste Management Board (Board) adopt regulations to enable such persons to obtain temporary solid waste facilities permits to authorize the continued operation of such facilities for a limited period to provide them time to obtain permanent solid waste facilities permits pursuant to the Integrated Waste Management Act (the Act) and Board regulations.

(b) The purpose of this article is to authorize an enforcement agency, upon the concurrence of the Board's Executive Director, to issue a temporary solid waste facilities permit, to the operator of an eligible facility that is required to have a solid waste facilities permit but has not obtained such a permit.

(c) This article establishes procedures by which operators may apply for a temporary solid waste facilities permit and informs operators of eligible facilities and enforcement agencies of those procedures.

(d) This article establishes standards and other regulatory requirements for facilities operating under a temporary solid waste facilities permit.

(e) This article establishes procedures for enforcement agency and Board consideration of applications for temporary solid waste facilities permits, for Board concurrence in or objection to proposed permits, and enforcement agency issuance or denial of permits.

(f) This article does not restrict any facility or recycling center, as defined in 17402.5(d) of Title 14, California Code of Regulations (14 CCR), from conducting recycling activities in accordance with applicable law.

(g) This article does not limit the authority of the state or a local agency, including the Board and an enforcement agency, to enforce State Minimum Standards and all other provisions of the Act and Board regulations within their respective jurisdictions.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New article 3.1.1 (sections 18218–18218.9) and section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.1. Definitions.

In addition to the definitions set forth in the Act or in sections 17381, 17402, and 17852 of the 14 CCR, the following definitions apply exclusively to this article:

(a) "Temporary Solid Waste Facilities Permit" or "Temporary Permit" means a solid waste facilities permit issued pursuant to this article.

(b) "Solid Waste Transfer or Processing Station" means a Transfer/Processing Facility that receives 15 tons or more of solid waste or 200 tons or more of construction and demolition debris [defined at 14 CCR 17381(e)] or construction and demolition wood mulch [defined at 14 CCR 17381(f)] per operating day for the purpose of storing, handling or processing some or all of the material prior to transferring the material to another solid waste operation or facility. Solid waste transfer or processing station does not include activities excluded from regulation in 14 CCR 17402.5.

(1) In determining the tonnage of solid waste received by a facility, the following materials shall be excluded: recyclable materials received by a recycling center located within the facility, including without limitation beverage container recycling programs in accordance with Public Resources Code sections 14511.7, 14518, or 14520, if the recycling activities are separated from the solid waste handling activities by a defined physical barrier or are otherwise separated from solid waste handling activities in a manner approved by the enforcement agency.

(2) If a facility does not weigh the solid waste, construction and demolition debris or construction and demolition wood mulch received, the tonnage shall be determined using a volumetric conversion factor.

(c) "Composting Facility" means a Compostable Material Handling Facility that processes, transfers, or stores compostable material. Handling includes composting, screening, chipping and grinding, and storage activities related to the production of compost, compost feedstocks, and chipped and ground materials, and as more fully described at 14 CCR 17852(a)(12). Composting facility does not include activities excluded from regulation in 14 CCR 17855.

(d) "Eligible Facility" means a solid waste transfer or processing station or a composting facility that has been in continuous operation since January 1, 2007 or earlier and for which a solid waste facilities permit issued pursuant to the Act and Board regulations is required as of January 1, 2008, but has not yet been issued by the enforcement agency having jurisdiction.

(e) "Facility" means either a Solid Waste Transfer or Processing Station or a Composting Facility, as defined in this article.

(f) "In Operation" means that the facility is actively engaged in the business of solid waste handling or compostable materials handling.

(g) "Permanent Solid Waste Facilities Permit" means a solid waste facilities permit issued pursuant to the Act except a temporary permit issued pursuant to this article.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.2. Authority to Issue Temporary Permits.

(a) Pursuant to this article, an enforcement agency may issue a temporary permit that authorizes the operator of an eligible facility to continue operating for a limited time until it obtains a permanent solid waste facilities permit or July 1, 2010, whichever comes first.

(b) An enforcement agency may not accept an application for a temporary permit after May 9, 2008 (the "final application date").

(c) A temporary permit issued under this article shall expire on June 30, 2010 or on the effective date of the permanent solid waste facilities permit respecting the facility, whichever comes first.

(d) A temporary permit may not authorize any increase in the amount of materials handled at a facility or any change in the types of materials handled or in the manner they are handled, based on the facility's operations during calendar year 2007, except as the enforcement agency may determine that such changes are necessary to protect the public health and safety and the environment or to comply with state minimum standards applicable to the facility.

(e) A temporary permit may not authorize a facility to increase, or change the location of, the area devoted to solid waste handling activities or compostable materials handling activities beyond that utilized during calendar year 2007, except as the enforcement agency may determine that such increase or change is necessary to protect the public health and safety and the environment or to comply with state minimum standards applicable to the facility.

(f) A facility to which a temporary permit has been issued may not be moved from its location as of January 1, 2008 to another location on a different parcel of real property during the term of the permit.

(g) Neither ownership nor the operation of a facility to which a temporary permit has been issued may be transferred to another person during the term of the permit except as provided in Title 27, California Code of Regulations, Sections 21630 and 21670.

(h) Except as expressly provided otherwise in this article, facilities operating under a temporary permit shall comply with the Act and Board regulations applicable to such facilities.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.3. Requirement to Obtain a Temporary Permit.

(a) The operator of an eligible facility shall obtain a temporary permit pursuant to this article or a permanent solid waste facilities permit pursuant to the Act and Board regulations or shall immediately cease the activities for which a permit is required.

(b) An operator of an eligible facility, if it elects to apply for a temporary permit, shall submit a complete and correct application for such permit to the enforcement agency no later than the final application date.

(c) If an enforcement agency, acting pursuant to Public Resources Code Section 44002, issues a cease and desist order to the operator of an eligible facility prior to the final application date ordering the operator to cease operating a solid waste facility without a solid waste facilities permit, it shall, upon receipt of a complete and correct application for a temporary permit under this article, stay the effect of that portion of the order that directs the operator to cease operating a solid waste facility without the required solid waste facilities permit. The term of the stay shall run from the enforcement agency's determination that the application is complete and correct to its issuance of the temporary permit, in which case the enforcement agency's order to cease operating a solid waste facility without the necessary permit has no further effect, or its denial of the temporary permit and the completion of any appeals to the local hearing panel or hearing officer and the Board, in which case the cease and desist order shall be given its full force and effect. Notwithstanding, the effect of the cease and desist order will not be stayed if the enforcement agency determines the continued operation of the facility during the period of the stay may pose an imminent and substantial threat to the public health and safety and the environment.

(d) The operator of a facility operating pursuant to a temporary permit shall obtain a permanent solid waste facilities permit from the enforcement agency having jurisdiction, or cease the activities for which a solid waste facilities permit is required, on or before June 30, 2010.

[NOTE: A person who is conducting solid waste handling activities or composting who is not required to obtain a solid waste facilities permit may be required to notify the enforcement agency. See, for example, 14 CCR §§ 17403.3, 17383.3, 17383.4, 17383.7, 17857.1, and 17862.1.]

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.4. Standards Applicable to Facilities.

(a) The operator of a solid waste transfer or processing station for which a temporary permit has been issued must comply with the requirements of 14 CCR, division 7, chapter 3, articles 6.2 [Operating Standards], 6.3 [Record Keeping Requirements], and 6.35 [Additional Operating Requirements for Facilities Only].

(b) The operator of a composting facility for which a temporary permit has been issued must comply with the requirements of 14 CCR, division 7, chapter 3.1, articles 5 [Composting Operation and Facility Siting and Design Standards], 6 [Composting Operating Standards], and article 8 [Composting Operation and Facility Records]. If material is held at the composting facility longer than 7 days, the operator must also comply with the requirements of 14 CCR, division 7, chapter 3.1, article 7 [Environmental Health Standards].

(c) The owner or operator of a facility for which a temporary permit has been issued shall agree to allow the enforcement agency and the Board to inspect the facility at any time during normal business hours. The enforcement agency shall inspect the facility at least monthly and may inspect more frequently, as it deems appropriate. Inspections will be unannounced and unscheduled.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.5. Notification of Availability of a Temporary Permit.

Each enforcement agency shall attempt to notify the operators of all potential eligible facilities within its jurisdiction of the availability of temporary permits. The failure of an enforcement agency to so notify an operator of an eligible facility shall not excuse an operator from timely compliance with this article.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.6. Application for a Temporary Permit.

(a) The operator of an eligible facility who desires to obtain a temporary permit pursuant to this article shall file a complete and correct application for such permit on or before the final application date.

(b) The application must describe the solid waste handling and composting activities to be authorized under the temporary permit sought by the operator of the eligible facility. Those activities shall be substantially identical to those conducted by the operator during calendar year 2007, although the operator may decrease the amount of materials handled or make other changes that enhance the protection of the public health and safety or reduce the facility's impacts on the environment. In no case

shall the solid waste handling or composting activities be changed in a way that would subject the proposed permit to evaluation under the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000 et seq. The application must contain sufficient verifiable information regarding the solid waste handling and composting activities at the facility during 2007 to satisfy the enforcement agency that the activities proposed under the temporary permit are substantially identical to those conducted at the facility during calendar year 2007.

(c) The application for a temporary permit for a transfer and processing facility shall contain the following:

(1) Application For Solid Waste Facilities Permit/Waste Discharge Requirements Form (27 CCR, Division 2, CIWMB E-1-77, Version 8-04, Appendix 1 (incorporated herein by reference)). The applicant shall specify on the application that it is intended for a temporary permit.

(2) name(s) of the operator and owner.

(3) schematic drawing of the facility, including buildings and other structures, showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas.

(4) descriptive statement of the manner in which activities are currently conducted at the facility and proposed to be conducted under the temporary permit.

(5) days and hours that the facility operates. If the hours of waste receipt differ from the hours of material processing, each set of hours must be stated. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of waste received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above.

(6) total acreage contained within the operating area and total area that is to be included within the solid waste facilities permit.

(7) facility design capacity including the assumptions, methods, and calculations performed to determine the total capacity.

(8) information showing the types and the daily quantities of solid waste received during 2007. If tonnage was calculated from records stated in cubic yards, include the conversion factor used. The information submitted shall be in the form of verifiable business records, such as certified scale records, weight tags, receipts, bills of sale, disposal receipts, and other records acceptable to the enforcement agency. The information shall include records (if available) or good faith estimates (if records are not available) of the daily quantities of "putrescible wastes" and "residuals" (as defined in subdivision (a)(21) of Section 17402 and in subdivision (b)(1) of Section 17402.5 of 14 CCR, respectively) during calendar year 2007.

(9) description of the methods used by the facility to comply with each applicable state minimum standard as described in 14 CCR 18218.4.

(10) volume of quench or process water and the planned method of treatment, and disposal of any wastewater.

(11) description of provisions to handle unusual peak loading.

(12) description of transfer, recovery and processing equipment, including classification, capacity and the number of units.

(13) method for final disposal of the solid waste.

(14) method for the storage and removal of salvaged material.

(15) resumes of manager of the organization which will operate the facility.

(16) Fire Prevention, Control and Mitigation Plan which contains the following:

(A) Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site.

(B) Identification and description of the equipment the operator will have available (on site and readily available off-site) to control and extinguish fires.

(C) Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment.

(D) Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression.

(E) Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on the site, the quantity and dimensions of materials on the site, and the potential for subsurface fires in accumulations of flammable materials on the site.

(17) The operator shall certify whether the facility is included within the Nondisposal Facility Element of the applicable Countywide Solid Waste Management Plan. If not, the operator shall acknowledge that the facility must be included in such plan before a permanent solid waste facilities permit will be issued.

(18) The owner and operator shall each certify under penalty of perjury that the information provided is true and accurate to the best of their knowledge and belief.

(19) Evidence that a copy of the completed application was provided to the director of the local agency that oversees local land use planning for the jurisdiction in which the facility is located.

(20) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

(d) The application for a temporary permit for a composting facility shall contain the following:

(1) Application For Solid Waste Facilities Permit/Waste Discharge Requirements Form (27 CCR, Division 2, CIWMB E-1-77, Version 8-04, Appendix 1 (incorporated herein by reference)). The applicant shall specify on the application that it is intended for a temporary registration permit.

(2) name(s) of the operator and owner.

(3) A descriptive statement of the operations currently conducted at the facility and proposed to be conducted under the temporary permit.

(4) A schematic drawing of the facility, including any buildings and other structures, showing layout and general dimensions of all processes utilized in the handling and processing of materials including, but not limited to, unloading, storage, processing, parking, and loading areas.

(5) A description of methods used to control leachate, litter, odors, dust, rodents, and insects.

(6) A description of the emergency provisions for equipment breakdown or power failure.

(7) A description of the storage capacity and maximum and average length of time compostable materials will be stored at the facility.

(8) A description of compostable materials handling equipment used at the facility including type, capacity, and number of units.

(9) Information demonstrating the operations of the facility during 2007 in cubic yards, including without limitation compostable materials and feedstock received, processed and stored on the site and finished materials stored on the site. The information submitted shall be in the form of verifiable business records, such as certified scale records, weight tags, receipts, bills of sale, disposal receipts and other records acceptable to the enforcement agency.

(10) A description of provisions to handle unusual peak loadings.

(11) A description of the method for storage and final disposal of nonrecoverable or nonmarketable residues.

(12) A description of the water supplies for process water required.

(13) Identification of person(s) responsible for oversight of facility operations.

(14) An Odor Impact Minimization Plan pursuant to 14 CCR 17863.4.

(15) Fire Prevention, Control and Mitigation Plan which contains the following:

(A) Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site.

(B) Identification and description of the equipment the operator will have available (on site and readily available off-site) to control and extinguish fires.

(C) Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment.

(D) Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression.

(E) Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on the site, the quantity and dimensions of materials on the site, and the potential for subsurface fires in accumulations of flammable materials on the site.

(16) The operator shall certify whether the facility is included within the Nondisposal Facility Element of the applicable Countywide Solid Waste Management Plan. If not, the operator shall acknowledge that the facility must be included in such plan before a permanent solid waste facilities permit will be issued.

(17) The owner and operator shall each certify under penalty of perjury that the information provided is true and accurate to the best of their knowledge and belief.

(18) Evidence that a copy of the completed application was provided to the director of the local agency that oversees local use planning for the jurisdiction in which the facility is located.

(19) List of all public hearings and other meetings open to the public that have been held or copies of notices distributed that are applicable to the proposed solid waste facilities permit action.

(e) If an operator of an eligible facility fails to submit a complete and correct application to the enforcement agency by the final application date, the enforcement agency shall take appropriate enforcement action.

(NOTE: The information provided to comply with 18218.6(c)(8) and (d)(9) shall be substantial enough to provide a complete description of the specific waste types and amounts received. The description could include: a list of waste types and amounts; specific collection methods used such as curbside, commercial recycling bins, office recycling; the nature of the waste such as the percentage of putrescible materials mixed in the material; percentage of material that is sent for further processing or disposal; and similar information.)

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.7. Enforcement Agency Processing Requirements for a Temporary Permit.

(a) Upon receipt of an application for a temporary permit on or before the final application date, the enforcement agency shall mark on the application form the date of its receipt.

(1) Within 20 days from receipt, the enforcement agency shall (i) review the application to determine whether it meets the requirements of section 18218.6 and (ii) notify the applicant in writing of any deficiencies in the application.

(2) Within 10 days from its receipt of notice that the application is deficient, the applicant may submit to the enforcement agency revised or additional materials to correct the deficiencies in the application.

(3) Within 5 days from its receipt of such revised or additional materials, the enforcement agency shall (i) determine if the application, as revised and supplemented, meets the requirements of section 18218.6 and (ii) take the action specified in subdivision (b) or (c) of this section, as appropriate.

(b) If the enforcement agency finds that the application is not complete and correct pursuant to section 18218.6, the enforcement agency shall reject the application and mail a copy of the rejected application, together with an explanation of the basis for its rejection, to the applicant.

(c) If the enforcement agency finds the application is complete and correct pursuant to section 18218.6, the enforcement agency shall accept the application for filing, stamp the application form with the date and time of its acceptance and notify the applicant in writing that its application has been accepted for filing.

(d) Within 15 days of the enforcement agency's acceptance of an application for filing:

(1) The enforcement agency shall evaluate the information provided in the application and shall inspect the facility to determine whether or not the facility will be able to operate in compliance with the applicable standards.

(2) If the enforcement agency finds that the application and facility meet the requirements set forth in this article, the enforcement agency shall prepare a proposed temporary permit and shall submit the proposed permit, the application package, and the results of any analysis of the proposed permit to the Board. The enforcement agency shall also deliver a copy of the proposed temporary permit to the applicant.

(3) If the enforcement agency finds that the application or facility do not meet the requirements set forth in this article, the enforcement agency shall deny the application and the enforcement agency shall mail a copy of the denied application to the applicant, together with an explanation of the basis for its denial.

(e) If the Executive Director of the Board concurs in the issuance of the proposed temporary permit, the enforcement agency shall issue the permit within 5 days from its receipt of notice of Board concurrence.

(f) If the Executive Director of the Board objects to the proposed permit, the enforcement agency shall notify the applicant in writing of the Executive Director's decision and the basis for the Executive Director's objection and shall deny the application within 5 days from its receipt of that decision.

(g) If the enforcement agency denies an application for a temporary permit, whether as a result of its own determination or the objection of the Executive Director, the operator may appeal to the applicable hearing panel or hearing officer pursuant to Public Resources Code, section 44300. Upon a timely appeal, the denial of the application shall be suspended pending completion of the hearing and the issuance of a decision by the hearing panel or hearing officer and any subsequent appeal to the Board.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.8. Board Processing Requirements.

(a) Board staff shall evaluate the application package and the proposed temporary permit for compliance with the requirements set forth in this article.

(b) Within 15 days of the Board's receipt of a proposed temporary permit, the Executive Director of the Board shall either concur in or object to the issuance of the proposed temporary permit.

(c) The Executive Director of the Board shall concur in the issuance of a temporary permit unless he/she makes any of the following determinations:

(1) The application package that the enforcement agency submitted to the Board with a proposed temporary solid waste facilities permit is incomplete.

(2) The information provided by the applicant and the enforcement agency to demonstrate the nature and level of solid waste handling activities or compostable materials handling activities at the facility in 2007 does not justify the activities proposed at the facility under the proposed temporary permit, is not credible due to a lack of verification or other reasons, or is contradicted and discredited by credible evidence provided to the Executive Director.

(3) The enforcement agency's proposed temporary permit developed pursuant to this article does not insure that the facility will be able to oper-

ate consistent with applicable standards, as determined by the Executive Director.

(d) The failure of an eligible facility to be specified in the Nondisposal Facility Element of the applicable Countywide Solid Waste Management Plan is not grounds for the Executive Director to object to a proposed temporary permit in that the issuance of a temporary permit does not constitute the establishment or expansion of a solid waste facility for the purposes of Public Resources Code Section 50001.

(e) If the Executive Director objects to a proposed temporary permit, he/she shall accompany his/her objection with an explanation of the basis for his/her decision, which may suggest amendments that may correct the deficiencies in the proposed temporary permit; however, such suggestions do not constitute approval of the proposed temporary permit subject to incorporation of the suggestions.

(f) Within seven days from the Executive Director's concurrence in, or objection to, a proposed temporary permit, the Board staff shall notify the enforcement agency of the Executive Director's determination in writing. If the Executive Director objects, the reasons for the objection shall be provided to the enforcement agency.

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

§ 18218.9. Form of Temporary Permit.

For purposes of this article, the following form shall be used by an enforcement agency when issuing a temporary permit. This form shall be accurately and fully completed by the enforcement agency and shall not be modified. The enforcement agency shall sign and issue the permit only after it has received written notice of concurrence in the proposed permit by the Executive Director of the Board.

State of California — California Integrated Waste Management Board

TEMPORARY SOLID WASTE FACILITIES PERMIT

Name of Facility:

Type of Facility: Solid Waste Transfer or Processing Station
Composting Facility

Name and Address of Enforcement Agency:

Signature of Local Enforcement Agency Approving Officer: Date of Issuance:

Printed Name and Title of Approving Officer:

This permit has been issued by the enforcement agency in accordance with Article 3.1.1,Chapter 5, Division 7, Title 14, of the California Code of Regulations. This permit incorporates by reference, as terms and conditions of the permit, all minimum standards applicable to it, as set forth in Division 7, Title 14, of the California Code of Regulations. These minimum standards include, but are not limited to the following:

The facility for which this permit has been issued may only be operated in accordance with the description provided in the attached application package, date _____, which is hereby incorporated by reference. This permit shall expire on the effective date of a solid waste facilities permit issued to the operator of the facility or June 30, 2010, whichever comes first.

[NOTE: An enforcement agency may contact CIWMB Permitting and LEA Support Division for assistance in completing this form. An electronic version of this form is available on the CIWMB website at http://www.ciwmb.ca.gov/LEAcentral.]

NOTE: Authority cited: Section 44002.1, Public Resources Code. Reference: Section 44002.1, Public Resources Code.

HISTORY

1. New section filed 3–10–2008 as an emergency; operative 3–10–2008 (Register 2008, No. 11). Pursuant to Public Resources Code section 44002.1(d), a Certificate of Compliance must be transmitted to OAL by 6–30–2010 or emergency language will be repealed by operation of law on the following day.

Article 3.2. Reports of Facility Information

§ 18220. Report of Green Composting Site Information.

NOTE: Authority cited: Section 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–15–93; operative 7–15–93 (Register 93, No. 29).
2. Repealer of section and Appendix I filed 6–30–95; operative 7–30–95 (Register 95, No. 26).

§ 18221. Report of Station Information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect adding section 18221 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 18221.5. Facility Plan.

Each operator of a Medium Volume Transfer/Processing Facility, or Direct Transfer Facility that is required to obtain a Registration Permit, as set forth in sections 17403.4 and 17403.6 and Title 14, Division 7, Chapter 5.0, Article 3.0, (commencing with section 18100) shall, at the time of application, file a Facility Plan or "Plan" with the EA as required in section 17403.8 of this Title. In order to maintain the permit, the operator must file amendments as necessary to maintain the accuracy of the Facility Plan required in section 174093.8 of this Title. Such amendments, or lack thereof, may become the basis for changes in the permit or for revocation of the permit. A Plan shall contain the following:

(a) name(s) of the operator, owner, and the company they represent, if applicable;

(b) schematic drawing of the building and other structures showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas;

(c) descriptive statement of the manner in which activities are to be conducted at the facility;

(d) days and hours that the facility is to operate. If the hours of waste receipt differ from the hours of material processing, each set of hours may be stated. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of waste received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(e) total acreage contained within the operating area;

(f) facility design capacity including the assumptions, methods, and calculations performed to determine the total capacity;

(g) information showing the types and the daily quantities of solid waste to be received. If tonnage was figured from records of cubic yards, include the conversion factor used;

(h) description of the methods used by the facility to comply with each state minimum standard contained in sections 17406.1 through 17419.2;

(i) anticipated volume of quench or process water and the planned method of treatment, and disposal of any wastewater;

(j) description of provisions to handle unusual peak loading;

(k) description of transfer, recovery and processing equipment, including classification, capacity and the number of units;

(*l*) planned method for final disposal of the solid waste;

(m) planned method for the storage and removal of salvaged material;

(n) resume of management organization which will operate the facility.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 18221.6. Transfer/Processing Report.

Each operator of a Large Volume Transfer/Processing Facility that is required to obtain a Full Solid Waste Facility Permit, as set forth in Title 27, Division 2, Subdivision 1, Chapter 4, Subchapter 3, Articles 2.0–3.2, (commencing with section 21570) shall, at the time of application, file a Transfer/Processing Report or "Report" with the EA as required in section 17403.9 of this Title. In order to maintain an existing permit, the operator must file amendments as required in section 17403.9 of this Title and re–title the document as a Transfer/Processing Report. Such amendments, or lack thereof, may become the basis for changes in the permit or for revocation of the permit. A Report shall contain the following:

(a) name(s) of the operator, owner, and the company they represent, if applicable;

(b) facility specifications or plans, to include: a site location map, a site map, and identification of adjacent land uses and distances to residences or structures that are nearby and are within 1000 feet of the facility property line;

(c) schematic drawing of the building and other structures showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas;

(d) descriptive statement of the manner in which activities are to be conducted at the facility;

(e) days and hours the facility is to operate. If the hours of waste receipt differ from the hours of material processing, each set of hours may be stated. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of waste received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(f) total acreage contained within the operating area;

(g) facility design capacity including the assumptions, methods, and calculations performed to determine the total capacity;

(h) information showing the types and the daily quantities of solid waste to be received. If tonnage was figured from records of cubic yards, include the conversion factor used;

(i) description of the methods used by the facility to comply with each state minimum standard contained in sections 17406.1 through 17419.2;

(j) anticipated volume of quench or process water, and the planned method of treatment, and disposal of any wastewater;

(k) description of provisions to handle unusual peak loading;

(*l*) description of transfer, recovery and processing equipment, including classification, capacity and the number of units;

(m) planned method for final disposal of the solid waste;

(n) planned method for the storage and removal of salvaged material;

(o) resume of management organization which will operate the facility;

(p) list of permits already obtained, and the date obtained or last revised.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 3–5–99; operative 3–5–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).

§ 18222. Report of Disposal Site Information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. Change without regulatory effect adding section 18222 filed 8–17–89 pursuant to section 100, title 1, California Code of Regulations (Register 89, No. 35).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18223. Facility Plan for Medium Volume Construction and Demolition/Inert Debris Processing Facilities and Medium Volume C&D Wood Debris Chipping and Grinding Facilities.

(a) Each operator of a medium volume CDI debris processing facility or medium volume C&D wood debris chipping and grinding facility that is required to obtain a Registration Permit, as set forth in CCR, Title 14, Division 7, Chapter 3.0, Article 5.9, sections 17383.5 or 17383.3, and CCR, Title 14, Division 7, Chapter 5.0, Article 3.0, commencing at section 18100 et seq., shall file with the EA, together with its application for a Registration Permit, a CDI Debris Processing Facility Plan or C&D Wood Debris Chipping and Grinding Plan, as applicable. The Plan shall contain the following:

(1) Names of the operator and owner, and the key employee responsible for operation of the site;

(2) Schematic drawing all buildings and other structures showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas;

(3) Descriptive statement of the manner in which activities are to be conducted at the facility;

(4) Days and hours that the facility is to operate. If the hours of debris receipt differ from the hours of material processing, each set of hours shall be stated. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of debris received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(5) Total acreage contained within the operating area;

(6) Facility design capacity including the assumptions, methods, and calculations performed to determine the total capacity;

(7) Information showing the types and the daily quantities of debris to be received. (In any calculations necessary as part of the plan, amounts shall be figured in tons. If tonnage is figured from cubic yards, include the conversion factors used as approved by the EA;

(8) Estimates of the amount of residual to be generated on a monthly basis and the amount of material salvaged and/or recycled;

(9) Description of the methods used by the facility to comply with each State Minimum Standard required by CCR, Title 14, Division 7, Chapter 3.0, Article 5.9;

(10) Anticipated volume of quench or process water and the planned method of treatment, and disposal of any wastewater;

(11) Description of provisions to handle unusual peak loading;

(12) Description of transfer, recovery and processing equipment, including classification, capacity and the number of units;

(13) Planned method for final disposition of debris received at the facility, including but not limited to materials being transferred to other facilities or operations for further processing, recycled materials, and solid waste;

(14) Planned method for the storage and removal of salvaged material;

(15) Resume of management organization which will operate the facility;

(16) The operator shall record and retain records of any serious injury to the public occurring on-site and any complaint of adverse health effects to the public attributed to operations. Serious injury means any injury that requires inpatient hospitalization for a period in excess of 24 hours or in which a member of the public suffers a loss of any member of the body or suffers any degree of permanent disfigurement; and

(17) The operator shall retain a record of training and instruction completed in accordance with Article 6.2, section 17410.3.

(18) A copy of the operator's Injury and Illness Prevention Plan (as applicable under current law).

(19) Fire Prevention, Control and Mitigation Plan ("Plan") which contains the following:

(A) Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site;

(B) Identification and description of the equipment the operator will have available (on site and readily available off-site) to control and extinguish fires;

(C) Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment;

(D) Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression;

(E) Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on site, the quantity and dimensions of materials on the site, and the potential for subsurface fires in accumulations of flammable materials on the site.

(F) Evidence that the operator has submitted the Plan to the local fire control authority for review and that the authority has found it to be in compliance with the authority's applicable requirements.

(b) The operator must file amendments as necessary to maintain the accuracy of the Plan. Such amendments may become the basis for revisions to the Registration Permit for the facility. Failure to submit timely amendments may be cause for suspension or revocation of the permit.

NOTE: Authority cited: Section 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7-10-2003; operative 8-9-2003 (Register 2003, No. 28).
2. Change without regulatory effect amending subsection (a) filed 6-29-2004 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 27).

§ 18223.5. Facility Reports for Construction and Demolition/Inert or Inert Debris Facilities and Large Volume C&D Wood Debris Chipping and Grinding Facilities.

(a) Each operator of a large volume CDI debris processing facility or inert debris processing facility, or large volume C&D wood debris chipping and grinding facility that is required to obtain a Full Permit, as set forth in CCR, Title 14, Division 7, Chapter 3.0, Article 5.9, sections 17383.6, or 17383.8, or 17383.3 and Title 27, CCR, Division 2, Subdivision 1, Chapter 4, commencing with section 21450, shall file with the EA, together with its application for a Full Permit, a CDI Debris Processing Facility Report or Inert Debris Processing Facility Report, as applicable. The Report shall contain the following:

(1) Names of the operator and owner, and the key employee responsible for operation of the site;

(2) Schematic drawing all buildings and other structures showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, loading, and parking areas;

(3) Descriptive statement of the manner in which activities are to be conducted at the facility;

(4) Days and hours that the facility is to operate. If the hours of debris receipt differ from the hours of material processing, each set of hours shall be stated. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of debris received per operating day. The operator may also indicate whether or not, and when, other activities, such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(5) Total acreage contained within the operating area;

(6) Facility design capacity including the assumptions, methods, and calculations performed to determine the total capacity;

(7) Information showing the types and the daily quantities of debris to be received. If tonnage was figured from records of cubic yards, include the conversion factor used;

(8) In any calculations necessary as part of the plan, amounts shall be figured in tons. If tonnage is figured from cubic yards, include the conversion factors used as approved by the EA;

(9) Description of the methods used by the facility to comply with each State Minimum Standard required by CCR, Title 14, Division 7, Chapter 3.0, Article 5.9, commencing at section 17380;

(10) Anticipated volume of quench or process water and the planned method of treatment, and disposal of any wastewater;

(11) Description of provisions to handle unusual peak loading;

(12) Description of transfer, recovery and processing equipment, including classification, capacity and the number of units;

(13) Planned method for final disposition of debris received at the facility, including but not limited to materials being transferred to other facilities or operations for further processing, recycled materials, and solid waste;

(14) Planned method for the storage and removal of salvaged material;

(15) Resume of management organization which will operate the facility;

(16) List of permits already obtained, and the date obtained or last revised;

(17) The operator shall record and retain records of any serious injury to the public occurring on–site and any complaint of adverse health effects to the public attributed to operations. Serious injury means any injury that requires inpatient hospitalization for a period in excess of 24 hours or in which a member of the public suffers a loss of any member of the body or suffers any degree of permanent disfigurement; and

(18) The operator shall retain a record of training and instruction completed in accordance with, Article 6.2, section 17410.3.

(19) A copy of the operator's Injury and Illness Prevention Plan (as applicable under current law).

(20) Fire Prevention, Control and Mitigation Plan ("Plan") which contains the following:

(A) Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site;

(B) Identification and description of the equipment the operator will have available (on site and readily available off–site) to control and extinguish fires;

(C) Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment;

(D) Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression;

(E) Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on site, the quantity and dimensions of materials on the site, and the potential for subsurface fires in accumulations of flammable materials on the site.

(F) Evidence that the operator has submitted the Plan to the local fire control authority for review and that the authority has found it to be in compliance with the authority's applicable requirements.

(b) The operator must file amendments as necessary to maintain the accuracy of the Report. Such amendments may become the basis for revisions to the Full Permit for the facility. Failure to submit timely amendments may be cause for suspension or revocation of the permit.

NOTE: Authority cited: Section 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–10–2003; operative 8–9–2003 (Register 2003, No. 28).

§ 18223.6. Disposal Facility Plan.

Each operator of an Inert Debris Type A Disposal Facility that is required to obtain a Registration Permit pursuant to Title 14 CCR, section 17388.4 shall, at the time of application, file a Disposal Facility Plan with the EA. In order to maintain the permit, the operator must file amendments as necessary to maintain the accuracy of the Plan. Such amendments, or lack thereof, may become the basis for changes in the permit or for revocation of the permit. A Disposal Facility Plan shall contain the following:

(a) Name(s) of the operator, owner, and the company they represent, if applicable;

(b) Scaled schematic drawing of the building and other structures showing layout and general dimensions of the operations area, including but not limited to, unloading, storage, loading, and parking areas;

(c) Descriptive statement of the manner in which activities are to be conducted at the facility;

(d) Days and hours of operation. If the hours of waste receipt differ from the hours of material processing, each schedule may be stated. For facilities with continuous operations, indicate the start of the operating day for the purpose of calculating the amount of waste received per operating day. The operator may also indicate whether or not, and when, other activities such as routine maintenance will take place, if those activities will occur at times other than those indicated above;

(e) Total acreage contained within the operating or disposal areas;

(f) Facility design capacity, including the assumptions, methods, and calculations performed to determine the total capacity;

(g) Information indicating the types and daily quantities of waste or debris to be received. If tonnage is determined from records of cubic yardage, include the conversion factor used in the calculation;

(h) Description of methods used by the facility to comply with each State Minimum Standard;

(i) Anticipated volume of quench or process water and the planned method of treatment and disposal of any wastewater;

(j) Description of provisions to handle unusual peak loading;

(k) Description of transfer, recovery and processing equipment, including classification, capacity and the number of units.

(l) Planned method for final disposal of the solid waste;

(m) Planned method for the storage and removal of salvaged material.

(o) Resume of management organization that will operate the facility.

(p) A description of road building and seasonal tipping pad design.

(q) A description of a program to prevent the acceptance of unapproved materials and hazardous wastes.

(r) A description of the planned method for storage and removal of prohibited wastes.

(s) A copy of the operator's Injury and Illness Prevention Plan (as applicable under current law).

NOTE: Authority cited: Sections 40502, 43020, 43021 and 48007.5, Public Resources Code. Reference: Sections 40053, 43020, 43021 and 48007.5, Public Resources Code.

HISTORY

1. New section filed 12–26–2003; operative 2–24–2004 (Register 2003, No. 52).
2. Editorial correction of HISTORY 1 (Register 2004, No. 2).

§ 18224. Report of Contaminated Soil Disposal Site Information.

Each operator of a contaminated soil disposal facility that is required to obtain a Standardized Solid Waste Facilities permit, as set forth in section 17362.3, shall, at the time of application, file a Report of Contaminated Soil Disposal Site Information with the enforcement agency. A Report of Contaminated Soil Disposal Site Information shall contain the following:

(a) A descriptive statement of the manner in which the operation is to be conducted at the site.

(b) Information showing the types and concentrations of chemical constituents, and the quantities of contaminated soil to be received.

(c) A schematic drawing of the facility showing layout and general dimensions of the operations area, including, but not limited to, unloading, storage, disposal, and parking.

(d) A description of the proposed methods used to control litter, nuisances, odors, noise impacts, dust, and other public health and safety and environmental hazards.

(e) Indication of the approximate total acreage contained within the operations area and either the total estimated capacity in tons indicating in place densities assumed, or the capacity in cubic yards. Also include

a projection of the life expectancy of the site based on current and/or anticipated loadings.

(f) The general location of the proposed disposal site shown on a map of at least the scale size equivalent to a 1:24,000 USGS topographical quadrangle. Such map shall show points of access to the site.

(g) A plot plan which delineates the legal boundaries for which clear title is held by the applicant and/or any parcels which are leased. Copies of lease agreements shall be submitted and substantiation shall be shown that the disposal site owner is cognizant of the disposal operations and the responsibilities assigned to the site owner by the standards.

(h) Identification on the plot plan of the specific limits of the existing and planned disposal area(s) showing relationships to the property boundary lines and adjacent land uses surrounding the site, distances to the nearest structures shall be identified.

(i) A description of the sequence of development stages of the disposal site facility, giving tentative implementation schedules for development, usage, site completion and closure. Describe the extent of change which will occur in areas which will be excavated for the placement of contaminated soil.

(j) A map showing the existing topographical contours of the property and proposed final elevations of the completed disposal site.

(k) If known, a description of the uses of the site after termination of disposal operations, including the time frame for implementation of such use.

(*l*) Resume of management organization which will operate the disposal site.

(m) Compilation of the conditions, criteria, and requirements established by the various approval agencies having jurisdiction over the disposal site.

(n) A listing of permits already obtained and the date obtained or last revised.

NOTE: Authority cited: Sections 40502, 43020, and 43021 of the Public Resources Code. Reference: Sections 43020 and 43021 of the Public Resources Code.

HISTORY

1. New section filed 3–25–96; operative 4–24–96 (Register 96, No. 13).

§ 18225. Nonhazardous, Nonputrescible, Industrial Solid Waste Codisposal Plan.

With an application for a permit, the operator of a facility shall file a Nonhazardous, Nonputrescible, Industrial Solid Waste Codisposal Plan with the EA, as required in section 17369(b) of Article 5.7. In order to maintain the permit, the operator must file amendments as necessary to maintain the accuracy of the facility Plan required in section 17369(b). Such amendments, or lack thereof, may become the basis for revocation of the permit. A Plan shall contain the following information, and may be derived from the Operation Plan approved by DTSC:

(a) name(s) of the operator and owner;

(b) scaled schematic drawing of the operations area, including but not limited to the active codisposal unit(s), and any DTSC/RWQCB approved closed waste management units, which contain nonhazardous, nonputrescible, industrial solid waste codisposed with hazardous waste;

(c) days and hours of operation for the disposal of nonhazardous, nonputrescible, industrial solid waste. For facilities with continuous operations, indicate the start of the operating day for the purpose of calculating the amount of nonhazardous, nonputrescible, industrial solid waste received per operating day.

(d) total acreage contained within the operating codisposal unit(s);

(e) unit design capacity;

(f) The operator of a facility shall demonstrate to the EA, pursuant to Title 27 California Code of Regulations section 20918, that there is no potential for adverse impacts on public health and safety or the environment based on a projection of methane gas generation. This information shall be certified in writing by a registered civil engineer or registered geologist.

(g) The operator shall demonstrate evidence of acceptable closure and postclosure maintenance plans by providing written verification of compliance with DTSC, Title 22, Chapter 14 or Chapter 15, closure and postclosure maintenance plan requirements, if applicable, as they may be amended from time to time.

(h) Notwithstanding anything to the contrary in Title 27, California Code of Regulations, Division 2, Chapter 6 (commencing with Section 22200), the operator shall demonstrate evidence of acceptable closure and postclosure maintenance cost, and operating liability financial assurance mechanisms by providing written verification of compliance with DTSC, Title 22, Division 4.5, Chapter 14, Article 8 (commencing with Section 66264.140) financial assurance requirements, or Chapter 15, Article 8 (commencing with Section 66265.140), if applicable, as they may be amended from time to time.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 7–31–2000 as an emergency; operative 10–1–2000 (Register 2000, No. 31). A Certificate of Compliance must be transmitted to OAL by 1–29–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 1–29–2001 as an emergency; operative 1–29–2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5–29–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 5–17–2001 as an emergency; operative 5–30–2001 (Register 2001, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–27–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 9–24–2001 as an emergency; operative 9–28–2001 (Register 2001, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–28–2002 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–11–2001 as an emergency; operative 1–23–2002 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 5–23–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–11–2001 order, including amendment of first paragraph and new subsections (g) and (h), transmitted to OAL 4–10–2002 and filed 5–21–2002 (Register 2002, No. 21).

§ 18226. Report of Nonhazardous Ash Disposal Site Information.

(a) Each operator of a nonhazardous ash disposal/monofill facility that is required to obtain a Standardized Solid Waste Facility Permit, as set forth in section 17377.3, shall, at the time of application, file a Report of Nonhazardous Ash Disposal Site Information with the enforcement agency. A Report of Nonhazardous Ash Disposal Site Information shall contain all of the information required in Title 27, California Code of Regulations, section 21600 with the exception of subsections: (b)(3)(A), (b)(4)(E), and (b)(8)(B).

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–26–97; operative 9–26–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).

§ 18227. Report of Composting Site Information.

Each operator of a compostable material handling facility that is required to obtain a Compostable Materials Handling Facility Permit, as specified in Title 27, California Code of Regulations, Division 2, Subdivision 1, Chapter 4, Subchapter 1 and Subchapter 3, Articles 1, 2, 3, and 3.1 (commencing with section 21450), shall, at the time of application, file a Report of Composting Site Information with the EA as required by section 17863 of this Title. A Report of Composting Site Information shall contain the following:

(a) A description of the processes to be used, including estimated quantities of feedstocks, additives, and amendments.

(b) A descriptive statement of the operations conducted at the facility.

(c) A schematic drawing of the facility showing layout and general dimensions of all processes utilized in the production of compost including, but not limited to, unloading, storage, processing, parking, and loading areas.

(d) A description of the proposed methods used to control leachate, litter, odors, dust, rodents, and insects.

(e) A description of the proposed emergency provisions for equipment breakdown or power failure.

(f) A description of the storage capacity and anticipated maximum and average length of time compostable materials will be stored at the facility.

(g) A description of compostable materials handling equipment used at the facility including type, capacity, and number of units.

(h) Anticipated annual operation capacity for the facility in cubic-yards.

(i) A description of provisions to handle unusual peak loadings.

(j) A description of the proposed method for storage and final disposal of nonrecoverable or nonmarketable residues.

(k) A description of the water supplies for process water required.

(*l*) Identification of person(s) responsible for oversight of facility operations.

(m) A description of the proposed site restoration activities, in accordance with section 17870.

(n) An Odor Impact Minimization Plan pursuant to section 17863.4.

NOTE: Authority cited: Sections 40502, 43020, 43021 and 43209.1, Public Resources Code. Reference: Sections 43020, 43021 and 43209.1, Public Resources Code.

HISTORY

1. New section filed 4–4–2003; operative 4–4–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).
2. Change without regulatory effect amending first paragraph and subsections (m) and (n) filed 8–23–2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

Article 3.3. Financial Responsibility for Operating Liability Claims

§ 18230. Scope and Applicability.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer of article 3.3 (sections 18230–18245) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to financial responsibility for solid waste disposal facility operating liability claims have been relocated to title 27, division 2.

§ 18231. Definitions.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18232. Amount of Required Coverage.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. New subsection (a)(2) and subsection renumbering and amendment of subsection (a)(3) filed 5–19–92 as an emergency; operative 5–19–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9–16–92 or emergency language will be repealed by operation of law on the following day.
3. New subsection (a)(2) and subsection renumbering and amendment of subsection (a)(3) refiled 9–16–92 as an emergency; operative 9–16–92 (Register 92, No. 38). A Certificate of Compliance must be transmitted to OAL 1–14–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–16–92 order transmitted to OAL 12–21–92 and filed 1–28–93 (Register 93, No. 5).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18233. Acceptable Mechanisms and Combinations of Mechanisms.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18234. Trust Fund.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18235. Government Securities.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18236. Insurance.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect amending subsection (c) filed 6–1–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 23).
3. Change without regulatory effect amending subsections (e)(1)–(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18237. Self-Insurance and Risk Management.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18238. Financial Means Test.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect amending subsections (e)(1)(A)–(B) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18239. Corporate Guarantee.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect amending subsection (c) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18240. Insurance and Environmental Fund.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Amendment of subsection (d)(3) filed 5–19–92 as an emergency; operative 5–19–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9–16–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (d)(3) refiled 9–16–92 as an emergency; operative 9–16–92 (Register 92, No. 38). A Certificate of Compliance must be transmitted to OAL 1–14–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–16–92 order transmitted to OAL 12–21–92 and filed 1–28–93 (Register 93, No. 5).
5. Change without regulatory effect amending subsections (b) and (d)(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Editorial correction deleting duplicate section 18240 (Register 96, No. 16).

7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18241. Substitution of Mechanisms by Operator.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18242. Cancellation or Nonrenewal by a Provider of Financial Assurance.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18243. Bankruptcy or Other Incapacity of Operator or Provider of Financial Assurance.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18244. Recordkeeping and Reporting.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18245. Release of an Operator from the Requirements.

NOTE: Authority cited: Sections 40502 and 43040, Public Resources Code. Reference: Section 43040, Public Resources Code.

HISTORY

1. New section filed 4–2–92; operative 7–1–92 (Register 92, No. 17).
2. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 3.4. Application and Approval of Closure and Postclosure Maintenance Plans

§ 18250. Scope and Applicability.

NOTE: Authority cited: Sections 40502 and 43509, Public Resources Code. Reference: Sections 43020, 43021, 43501, 43509, 44001, 44002, 46022 and 46026, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.60 and 258.61.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency, language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsection (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Amendment of subsection (b) and NOTE filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b) and NOTE refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).
8. Repealer of article 3.4 (sections 18250–18277) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to application and approval of closure and postclosure maintenance plans have been relocated to title 27, division 2.

§ 18251. Definitions.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22, Government Code; and Sections 43020, 43021 and 46027, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency,; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 is an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including new subsection (a)(4) and amendment of subsection (a)(8) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18255. Submittal of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d),Government Code; Reference: Sections 66796.22(b)(2) and 66796.22(d), Government Code; and Sections 43020, 43021, 43022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18256. Operation of a Solid Waste Landfill Without Approved Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022, and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Change without regulatory effect repealing section filed 10–28–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 44).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18257. Maintenance of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 43022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18260. Closure and Postclosure General Performance Standard.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(a) 66796.22(b)(2) and 66796.22(d), Government Code, and Sections 43020, 43021, 46026 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18261. Preliminary Closure Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022, and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL. within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18261.3. Contents of the Preliminary Closure Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022, and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repeated by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including new subsection (a)(9) transmitted to OAL and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18262. Final Closure Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18262.3. Contents of the Final Closure Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including new subsections (a)(7) and (a)(8) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18263. Closure Cost Estimates.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18264. Preliminary Postclosure Maintenance Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120

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days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18264.3. Contents of the Preliminary Postclosure Maintenance Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. Certificate of Compliance as to 3–22–90 order including new subsections (a)(5) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

4. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18265. Final Postclosure Maintenance Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18265.3. Contents of the Final Postclosure Maintenance Plan.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order including new subsection (a)(10) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18266. Postclosure Maintenance Cost Estimates.

NOTE: Authority cited: Section 40502, 40508, and 43509, Public Resources Code. Reference: Sections 40508, 43020, 43021, 43501, 43509, 46022 and 46026, Public Resources Code; and Title 40, Code of Federal Regulations, Section 258.72.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

5. Amendment of subsection (a)(3) and NOTE filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.

6. Amendment of subsection (a)(3) and NOTE refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).

8. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18267. Form of Application for Review of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b), 66796.22(d) and 66796.22(f), Government Code; and Sections 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18268. Filing of Application and Transmittal of Copies.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 65943, 66796.22(b)(2), 66796.22(c) and 66796.22(d), Government Code; and Sections 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.

2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.

3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (b)–(d) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).

5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18269. Public Notice.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 21080.5, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 6–18–90; operative 6–18–90 (Register 90, No. 34).

2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18270. Evaluation of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(b), and 66796.22(d), Government Code; and Sections 21080.5, 43200, 43202, 43203, 43209, 44012, 44014(b), 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative, 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a) and (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18271. Approval of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 21080.5, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order including amendment of subsection (a), (b) and (b)(2); addition of subsections (b)(4) and (b)(5) and deletion of subsection (a)(4) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Editorial correction of subsection (b)(2) (Register 95, No. 48).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18272. Amendment of Closure and Postclosure Maintenance Plans.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(d), Government Code; and Sections 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18275. Certification of Closure.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(d), Government Code; and Sections 43020, 43021, 44006, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18276. Revision of Plans During Closure and Postclosure Maintenance.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Sections 66796.22(b)(2) and 66796.22(h), Government Code; and Sections 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18277. Release From Postclosure Maintenance.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(d), Government Code; and Sections 43020, 43021, 46022 and 46026, Public Resources Code.

HISTORY

1. New section filed 8–18–89 as an emergency; operative 8–18–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed by operation of law on 12–18–89.
2. New section refiled 12–8–89 as an emergency; operative 12–18–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–17–90.
3. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
4. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
5. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 3.5. Financial Responsibility for Closure and Postclosure Maintenance

§ 18280. Scope and Applicability.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Amendment of subsection (b) and NOTE filed 7–12–93 as an emergency; operative 7–12–93 (Register 93, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–93 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (b) and NOTE refiled 11–9–93 as an emergency; operative 11–9–93 (Register 93, No. 46). A Certificate of Compliance must be transmitted to OAL by 4–26–93 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–9–93 order transmitted to OAL 3–8–94 and filed 4–19–94 (Register 94, No. 16).

9. Repealer of article 3.5 (sections 18280–18298) and section filed 6–18–97; operative 7–18–97 (Register 97, No. 25). Regulations pertaining to financial responsibility for closure and postclosure maintenance have been relocated to title 27, division 2.

§ 18281. Definitions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (s) and (w) and addition of subsection (o) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. New subsection (g), subsection relettering, and amendment of NOTE filed 2–2–93; operative 2–2–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 6).
7. Change without regulatory effect amending section filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
8. New subsections (a)–(a)(2), (c), (k) and (v), repeal of subsections (s)–(s)(2) and subsection relettering filed 12–31–93 as an emergency; operative 12–31–93 (Register 93, No. 53). A Certificate of Compliance must be transmitted to OAL by 3–31–94 or emergency language will be repealed by operation of law on the following day.
9. New subsections (a)–(a)(2), (c), (k), and (v), repealer of subsections (s)–(s)(2) and subsection redesignation refiled 4–29–94 as an emergency; operative 4–29–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–29–94 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 4–29–94 order transmitted to OAL with amendments 8–29–94 and filed 10–12–94 (Register 94, No. 41).
11. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18282. Amount of Required Coverage.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 43501, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Amendment filed 12–31–93 as an emergency; operative 12–31–93 (Register 93, No. 53). A Certificate of Compliance must be transmitted to OAL by 3–31–94 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 4–29–94 as an emergency; operative 4–29–94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–29–94 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4–29–94 order transmitted to OAL with amendments 8–29–94 and filed 10–12–94 (Register 94, No. 41).
9. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18283. Acceptable Mechanisms and Combinations of Mechanisms.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (c) and (d) and addition of subsection (g) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. New subsection (g), subsection relettering, and amendment of NOTE filed 2–2–93; operative 2–2–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 6).
7. Change without regulatory effect amending section filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
8. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18284. Trust Fund.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (b) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18285. Enterprise Fund.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18286. Government Securities.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate, of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within

120 days or emergency language will be repealed by operation of law on 4–16–90.

4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18287. Letter of Credit.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43601, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect amending of subsection (d)(1) and NOTE filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
8. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18288. Surety Bond.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 is an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (a) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect amending subsections (b)(1)–(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18289. Financial Means Test.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect amending subsection (e)(1) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18290. Pledge of Revenue.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 is an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative, 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsections (a), (b)(5), (c) and (d) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18291. Guarantee.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 66796.22(d), Government Code. Reference: Section 66796.22(f), Government Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY NOTE No. 1 (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51.). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect amending subsection (c) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18292. Federal Certification.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. Former section 18292 renumbered to section 18293 and new section filed 2–2–93; operative 2–2–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 6).
2. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18293. Substitution of Mechanisms by Operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.

5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering former section 18292 to section 18293, renumbering section 19293 to 18294, and amendment of subsection (a) and NOTE filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18294. Cancellation or Nonrenewal by a Provider of Financial Assurance.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering former section 18293 to section 18294, renumbering section 18294 to 18295 and amendment of NOTE filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18295. Bankruptcy or Other Incapacity of Operator or Provider of Financial Assurance.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering former section 18294 to section 18295, renumbering section 18295 to 18296, and amendment of subsections (a) and (c) and NOTE filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18296. Depository Trust Fund.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering former section 18295 to section 18296, renumbering section 18296 to 18297, and amendment of subsection (c) and NOTE filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18297. Record Keeping and Reporting.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order including amendment of subsection (b)(6) transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering and amending former section 18296 to section 18297 and renumbering section 18297 to 18298 filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

§ 18298. Release of an Operator from the Requirements.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43500–43610, Public Resources Code.

HISTORY

1. New section filed 8–17–89 as an emergency; operative 8–17–89 (Register 89, No. 35). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12–15–89.
2. Editorial correction of HISTORY 1. (Register 89, No. 51).
3. New section refiled 12–8–89 as an emergency; operative 12–15–89 (Register 89, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 4–16–90.
4. New section refiled 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days (by 7–20–90) or emergency language will be repealed by operation of law on 7–21–90.
5. Certificate of Compliance as to 3–22–90 order transmitted to OAL 5–17–90 and filed 6–18–90 (Register 90, No. 34).
6. Change without regulatory effect renumbering and amending former section 18297 to section 18298 filed 2–2–93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
7. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
8. Repealer filed 6–18–97; operative 7–18–97 (Register 97, No. 25).

Article 4. Enforcement by EA and Review by Board

§ 18301. Scope.

This article applies to the activities of EAs in enforcing the state minimum standards, permits, and related state solid waste laws and regulations within their purview. It also applies to the activities of the board in reviewing such activities of LEAs and in acting in the place of LEAs that have failed to take appropriate actions or, when the board is the EA in a particular jurisdiction.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43209, 43216.5 and 45012, Public Resources Code.

HISTORY

1. Amendment of article heading and section and new NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18302. Written Complaints of Alleged Violations.

(a) Any person having information alleging a facility or operation is being operated without a required permit or notification, in violation of one or more terms or conditions of a permit, in violation of the state minimum standards, or in violation of any related state solid waste laws or regulations, or that a permit was obtained wholly or partially by misrepresentation or nondisclosure of relevant facts, may file a complaint regarding such allegation in writing to the EA. The compliant shall include the following:

(1) The name, address and telephone number of the person making the complaint, however nothing in this chapter shall be construed to prevent

the making of anonymous complaints by omitting the identity of the reporting party from the complaint;

(2) The identity and location, if known, of the facility or operation and the names and addresses, if known, of the persons responsible for the violation;

(3) The nature of the violation and/or the relevant misrepresented or non–disclosed facts; and

(4) All known facts relevant to the alleged violation or likely to be of assistance to the EA in investigating the complaint, including but not limited to information relating to witnesses and physical evidence.

(b) The person making the complaint may forward a copy to the board.

(c) Upon receipt of a complaint, the EA shall within fifteen days examine the report and determine whether its allegations, if true, would constitute a violation of a state minimum standard, permit term or condition or any related state solid waste law or regulation. The EA shall make its determination on the basis of the substance of the allegations rather than on the basis of the complaint's technical compliance with the Act or this chapter. Should the EA determine that the complaint fails to allege facts constituting a violation of a state minimum standard, permit term or condition or related state solid waste law or regulation, it shall so advise the reporting party in writing at the address given in the complaint if an address is given and place a copy in its files.

(d) The EA may decline to investigate a complaint if, in its judgment, investigation is unwarranted because the allegations are contrary to facts known to the EA. Should the EA decline to investigate on that ground, it shall so advise the complaining party in writing at the address given in the complaint if an address is given and place a copy in its files.

(e) Except as provided in subsection (c) or subsection (d) of this section, the EA shall commence an investigation of the facts alleged in the complaint.

(f) If an LEA has a complaint review and investigation initiation procedure that contains substantially the same basic requirements as this section, and accomplishes the intended purposes of this section within its board–approved EPP, it may follow that equivalent process in lieu of subsections (c), (d) and (e) of this section. Section 18302 is intended to insure that every person making a written complaint of an alleged unlawful condition at a solid waste facility or operation can assume that his or her complaint will receive appropriate attention.

(g) If the board receives a complaint in a jurisdiction where it is not the EA, the complaint shall be forwarded to the appropriate LEA within 5 days of its receipt, unless the LEA has already received a copy from the complaining party.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43209, 44012, 44015 and 45000–45024, Public Resources Code.

HISTORY

1. Amendment filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Amendment of section heading, section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18303. Investigations.

(a) The EA shall conduct investigations of allegations made to it as required by subsection (e) of Section 18302 or, if applicable, as required by its own equivalent complaint review and investigation initiation procedure as described in its board–approved EPP, and shall conduct investigations of all other disposal sites, facilities and operations where it has reason to believe violations exist. In addition, the EA shall conduct such periodic investigations as it deems necessary to insure compliance with all related state solid waste laws and regulations. In any investigation of possible violation of a health–related standard, the LEA, if it is not the local health department, shall consult as appropriate with the local health department concerning enforcement and any other related actions. If an investigation of possible violation of a health–related standard is conducted by the board, it shall obtain and consider the recommendation of the State Department of Health Services in addition to that of the local health department/health officer.

(b) Investigations by LEAs shall be conducted in accordance with the procedures in their board–approved EPPs. The procedures shall include the requirements found in subsection (c).

(c) The EA shall maintain a record of each investigation. The record shall include but not be limited to the following:

(1) The names of all persons interviewed and the date ad location of each interview;

(2) A description of all documentary and other physical evidence examined;

(3) The dates, times, and locations of all inspections of the facility;

(4) A list of correspondence, including any written reports by the permittee;

(5) Any other evidence leading to resolve the issues.

(6) A summary of the findings and conclusions of each completed investigation.

(d) The summary of the findings and conclusions of each completed investigation shall be included in the next periodic inspection report, as applicable.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44100 and 44101, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Amendment of section and new NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18304. Notices and Orders.

(a) The EA as it deems appropriate or when required by statute, shall issue a notice and order pursuant to subsection (b) and section 18304.1 if, in the course of an investigation or at any other time, the EA determines that any facility, disposal site, operation or person(s):

(1) Is in violation of Division 30 of the Public Resources Code;

(2) Is in violation of any regulations adopted pursuant to Division 30;

(3) Is in violation of any of the terms or conditions of the solid waste facility permit under which the facility or disposal site is operating;

(4) Causes or threatens to cause a condition of hazard, or pollution; or

(5) Poses a potential or actual threat to public health and safety or the environment.

(b) The notice and order shall contain the following information:

(1) The identity of the EA.

(2) The name or names of each person or entity to whom it is directed.

(3) A description of the facility, operation or site where the violation was documented with a specific description of the location of the violation

(4) A description of the violation.

(5) The statutes, regulations, or permit terms or conditions the EA has determined are being violated.

(6) A schedule, as described in section 18304.1(a), by which the operator is to take specified action(s).

(7) The penalty for not complying within the specified schedule, as described in section 18304.1(b).

(8) A notice informing the owner/operator of their right to appeal the notice and order to the hearing panel or hearing officer under PRC 44307.

(9) The date of issuance and signature of an authorized officer or employee of the EA.

(c) The notice and order shall be accompanied by a declaration or affidavit under penalty of perjury of an employee or officer of the EA stating that the allegations contained in the notice and order are based either on personal knowledge or information and belief. If the basis of the allegations is the personal knowledge of the declarant or affiant, the declaration or affidavit shall state generally how such knowledge was obtained, including the date of any inspection. If the basis of the allegations is information and belief, the declaration or affidavit shall state generally the

source of the information; however, in no case shall the identity of an informant be required to be revealed.

(d) Within five business days of issuance of the notice and order, it shall be served on the owner and operator of the site, facility or operation, or person as applicable, in the following manner:

(1) If the site or facility has been issued a permit, or if an application for the site or facility is pending, or if the EA has received a Notification for the operation, by certified mail, return receipt requested, to the address last given by the owner and operator or by personal service if certified mail attempts are unsuccessful; or

(2) If no permit has been issued and no application is pending, or no Notification has been filed, by posting a copy at no less than one conspicuous place at the site or facility. Additional copies shall be mailed to addresses of the owner and operator if known to the EA.

(e) A copy of any notice and order shall be sent to the board within five business days of issuance.

Enforcement: For efficient administration, a single notice and order form will be used to initiate any of the various enforcement actions provided by the Act. However, it should be noted that certain enforcement actions are available only for certain types of violations.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45000–45024, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment of section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
3. Change without regulatory effect amending subsection (b)(8) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18304.1. Types of Notices and Orders; Enforcement Thereof.

The EA shall include in a notice and order at least one of the orders listed in subsection (a), and shall include the applicable notices listed in subsection (b):

(a) Orders

(1) Corrective Action Order

An order requiring the owner or operator of a facility, disposal site or operation to take specified action by a specified date to abate a nuisance, or to protect public health and safety or the environment.

Example: Typical circumstances under which this order may be issued: Conditions at the facility, disposal site or operation are creating a nuisance or posing a threat to human health and safety or the environment.

(2) Cease and Desist Order

An order requiring the owner or operator of a facility, disposal site or operation to cease and desist any improper action, as specified in PRC section 45005, by a specified date. Example: Typical circumstances under which this order may be issued: Facility, disposal site or operation is in violation of Division 30 of the Public Resources Code, any regulations adopted pursuant to Division 30, or causes or threatens to cause a condition of hazard, pollution or nuisance.

(3) Compliance Order

Upon any of the grounds specified in PRC section 45011(a)(1), an order establishing a time schedule according to which the owner or operator of the facility, disposal site or operation shall correct any violations and/or abate a potential or actual threat to public health and safety or the environment. Example: Typical circumstances under which this order may be issued: Facility, disposal site or operation is in violation of Division 30 of the Public Resources Code, any regulations adopted pursuant to Division 30, any corrective action or cease and desist order, or poses a potential or actual threat to public health and safety or the environment. A compliance order must be issued pursuant to PRC section 45011 as a prelude to the assessment of administrative civil penalties.

(b) Notices

(1) Notice informing the owner and operator that failure to comply by a specified date in a final corrective action order may result in the EA contracting for corrective action.

Enforcement: As more fully described in PRC section 45000, if the owner or operator fails to take corrective action as specified in a final order by the specified date, the EA or the board may either take corrective action itself or contract for corrective action to be completed by an outside party. Corrective actions taken by the EA, the board, or an outside party will be at the expense of the owner, operator or both and are recoverable pursuant to PRC section 45000.

(2) Notice informing the owner or operator that the EA may take action to impose administrative civil penalties upon failure to comply with applicable deadlines in a final compliance order.

Enforcement: Pursuant to PRC section 45011, if the owner or operator fails to achieve compliance by applicable deadlines in the order, the EA may impose penalties through written notification to the owner or operator. The notification shall include the amount of the penalty and the due date for payment, which in no case should be later than 30 days after the date the order becomes final.

(3) Notice informing the owner or operator that the EA is conditionally imposing administrative civil penalties in a specified amount per day with a specified start date for penalty accrual, upon failure to comply with applicable deadlines in a final compliance order.

Enforcement: If the owner or operator fails to achieve compliance by applicable deadlines in the order issued pursuant to PRC section 45011, the EA shall notify the owner or operator in writing of the amount of the penalty and the due date for payment, which in no case should be later than 30 days after the date the order becomes final.

(4) Notice informing the owner or operator that failure to comply by the deadline in a final order may result in the EA petitioning the superior court to enjoin the violations, and that continued violation after the granting of an injunction may be punishable as contempt of court.

Enforcement: If the owner or operator fails to comply by the deadline in a final order, the notice may be enforced by filing an appropriate petition in superior court.

(5) Notice informing the owner or operator that upon failure to comply with a deadline in a final order, the EA may bring an action in the superior court to impose upon the owner or operator civil penalties.

Enforcement: If the owner or operator fails to comply by the deadline in a final order, the notice may be enforced by filing an appropriate petition in superior court pursuant to PRC sections 45023 and 45024.

(6) Notice informing the owner or operator that the EA, subject to the applicable requirements of PRC sections 44305 and 44306, may take action to suspend or revoke the permit for the facility upon failure to comply with applicable deadlines in a final order.

Enforcement: If the owner or operator fails to comply by the deadline in a final order, the notice may be enforced by revoking or suspending the permit for the facility pursuant to PRC sections 44305 and 44306.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45000–45024 and 44305–44306, Public Resources Code.

HISTORY

1. New section filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18304.2. Final Orders.

An order becomes final when either:

(a) A notice and order has been requested by the operator and/or owner to be reviewed by the local hearing panel or hearing officer, and the hearing process has been completed pursuant to PRC sections 44307 & 44310, and any subsequent appeals to the board or Superior Court have been resolved pursuant to PRC sections 45030–45042, or;

(b) Within 15 days of receipt if no review was requested by the operator.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44307, 44310, 45017 and 45030–45042, Public Resources Code

HISTORY

1. New section filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

2. Change without regulatory effect amending subsection (a) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18304.3. Mandated Enforcement Actions.

An EA shall take the following enforcement actions for specific violations or situations:

(a) Issue a cease and desist order to cease operations immediately if the EA determines that a solid waste facility is operating without a permit or that an operation is operating without proper notification;

(b) If a facility is included on the Inventory of Solid Waste Facilities Which Violate State Minimum Standards pursuant to PRC section 44104, the EA is required to develop a compliance schedule which ensures that diligent progress is made by the operator to bring the facility into compliance pursuant to PRC section 44106. The compliance schedule may be incorporated into a notice and order.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44002, 44104 and 44106, Public Resources Code.

HISTORY

1. New section filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18304.4. Notice of Compliance Status.

Whenever the LEA issues a notice and order pursuant to sections 18304 and 18304.1 or develops a compliance schedule, the LEA shall, 30 days after the final compliance deadline or expiration date in the order or schedule, provide notification of the compliance status with the order or schedule to the board. The notice of compliance status may be included as part of an LEA's periodic inspection report and shall include a determination as to whether the operator is in compliance with the notice and order or schedule and whether the notice and order or schedule has been completed, extended or enforced, as the LEA deems applicable and appropriate, along with the justification and reasoning for the determination.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45000–45024, Public Resources Code.

HISTORY

1. New section filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18304.5. Notification of Enforcement.

Upon the taking of any action described in a notice as authorized by section 18304.1, the LEA shall within five business days advise the board of the action in writing and include a copy of any court documents that have been filed.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45000–45024, Public Resources Code.

HISTORY

1. New section filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18305. Enforcement of Notices and Orders.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45000–45300, 44501–44503 and 45505–45507, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18306. Emergency Actions.

(a) If the EA or the board determines that a violation exists that poses an imminent threat to public health and safety or the environment, the EA or the board may clean up, abate, or otherwise remedy the violation immediately upon failure of the owner and operator to take corrective actions by the deadline in a corrective action order issued pursuant to sections 18304 and 18304.1. An owner's or operator's request to review the EA's or board's action by a hearing panel or hearing officer pursuant to PRC section 44307, and any subsequent appeals, does not stay the effect of the order or prevent the EA or board from taking or contracting for corrective action.

(b) If any action is taken pursuant to subsection (a) of this section, the EA or the board shall give notice in the manner specified in section 18304(d) to the owner and operator as soon as practicable, but in no case later than five business days after taking the action. A copy of the notice shall be transmitted to the board within five business days of issuance.

(c) The EA or the board may bring an action in the superior or municipal court to recover the costs of emergency remedial measures. Upon the bringing of such an action, the EA shall advise the board of the action in writing accompanied by a copy of the complaint within five business days. When the board brings its own action in superior or municipal court, it shall notify the appropriate EA of the action in writing, accompanied by a copy of the complaint within five business days.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 45000–45024, Public Resources Code.

HISTORY

1. Amendment of subsection (c) filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Amendment of section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
5. Change without regulatory effect amending subsection (a) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18307. Actions to Suspend or Revoke a Permit.

(a) If the EA determines that there is cause for suspension or revocation of a permit pursuant to PRC sections 44305 or 44306 respectively, and the EA has previously notified the operator in writing of the violation or other condition which is cause for suspension or revocation, the EA may issue to the operator, via certified mail with return receipt requested or by personal service if certified mail attempts are unsuccessful, a Notice of Intent to Suspend (NIS) or a Notice of Intent to Revoke (NIR) the permit. The NIS or NIR shall inform the operator of the EA's intent to suspend or revoke the permit and of the operator's right to request the matter to be heard in front of the hearing panel or hearing officer pursuant to PRC section 44310. If the operator does not request a hearing within 15 days of receipt of the NIS or NIR, the EA may take action to suspend or revoke the permit without a hearing or it may hold a hearing prior to taking such action.

(b) The EA may, in its discretion, precede the issuance of the NIS or NIR filing by service of an appropriate notice and order in the manner specified in section 18304, or it may include the NIS or NIR within a notice and order as long as the EA has previously notified the operator in writing of the violation or other condition which is cause for suspension or revocation.

(c) Within five business days of issuing a NIS or NIR, the EA shall notify the board by providing it with a copy of the NIS or NIR.

(d) If, after an NIS or NIR has been issued the proceeding to suspend or revoke a permit is terminated in any manner other than by decision of the hearing panel or hearing officer, the LEA shall so advise the board in writing.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 44305–44310, Public Resources Code.

HISTORY

1. Amendment of subsection (d) filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Certificate of Compliance filed 11–1–77 (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
4. Amendment of section heading, section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).
5. Change without regulatory effect amending subsections (a) and (d) filed 10–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

§ 18308. Enforcement Actions by Board.

NOTE: Authority cited: Sections 40502 and 43304, Public Resources Code. Reference: Sections 45200, 45300 and 45506, Public Resources Code.

HISTORY

1. Change without regulatory effect pursuant to section 100(b)(1) and (b)(4), Title 1, California Code of Regulations renumbering former section 18308 to section 18350 filed 5–4–90; operative 6–3–90 (Register 90, No. 24).

§ 18309. Use of Performance Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49).
2. Change without regulatory effect filed 8–17–89 pursuant to section 100, Title 1, California Code of Regulations (Register 89, No. 35).
3. Change without regulatory effect pursuant to section 100 (b)(1) and (b)(4), Title 1, California Code of Regulations filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
4. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

[The next page is 806.11.]

§ 18310. Statement of Intent.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49).
2. Change without regulatory effect pursuant to section 100 (b)(1) and (b)(4),Title 1, California Code of Regulations filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
3. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18311. Failure to Meet Performance Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49).
2. Change without regulatory effect pursuant to section 100(b)(1) and (b)(4), Title 1, California Code of Regulations filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
3. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18312. Review of Performance Standards.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49).
2. Change without regulatory effect pursuant to section 100 (b)(1) and (b)(4), Title 1, California Code of Regulations filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
3. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18313. Inspection.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 12–2–80; effective thirtieth day thereafter (Register 80, No. 49).
2. Change without regulatory effect pursuant to section 100(b)(1) and (b)(4), title 1, California Code of Regulations filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
3. Editorial correction removing duplicate printing of section (Register 91, No. 29).
4. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

Article 5. Enforcement by Board

§ 18350. Enforcement Actions by Board.

(a) Should the board find good cause exists for the issuance of a notice and order (N&O) or for the taking of any other enforcement action and should the board further find that the LEA has failed to take such an action pursuant to the LEA performance criteria in section 18084, the board may take such an action after implementing the following procedures:

(1) Request in writing an increased enforcement response by the LEA, consisting of additional enforcement action pursuant to its EPP and, if applicable, to a previously issued N&O, and offer technical assistance. The request shall include documentation of the lack of appropriate enforcement action on the part of the LEA;

(2) If the LEA fails to respond within 30 days of receipt of the request with an increased enforcement response, the board shall issue a Notice of Intent to Take Action (NIA) to the LEA and the operator. The NIA shall include the date and time for a board hearing which shall be scheduled in no case earlier than 30 days from the date the NIA is sent;

(3) If the LEA still fails to respond with an increased enforcement response, the board shall hold a public hearing regarding its intent to take action. At the hearing, the board may decide to take enforcement action or to take any other action to improve LEA performance pursuant to PRC section 43216.5.

(b) In taking enforcement action, the board shall follow applicable procedures set forth for the EA in sections 18304 through 18307, as applicable. Notice of such action shall be given to the LEA in the same time and manner required for notice to the board by the LEA pursuant to section 18304(e).

(c) Notwithstanding section 18350(a), if the board finds that the LEA's failure to take enforcement action causes an imminent threat to public health and safety or the environment, the board may take enforcement action, as it deems necessary without prior notification or hearing.

(d) For purposes of this section, an imminent threat to public health and safety or the environment is defined as a condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the damages to persons, property, natural resources, or the public health or safety.

(e) In taking any enforcement action related to health standards as defined in section 17205, the board shall coordinate its activities with the State Department of Health.

NOTE: Authority cited: Sections 40502 and 43304, Public Resources Code. Reference: Sections 45000–45024, Public Resources Code.

HISTORY

1. Change without regulatory effect pursuant to section 100(b)(1) and (b)(4), Title 1, California Code of Regulations repealing former section 18350, and renumbering former section 18308 to section 18350 filed 5–4–90; operative 6–3–90 (Register 90, No. 24).
2. Amendment of section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18351. Assumption of Duties of EA.

(a) The board shall assume the duties of the EA upon occurrence of any of the following circumstances:

(1) Upon agreement of the board and local governing body and designation of the board in the manner provided by law; or

(2) Upon withdrawal of a designation where no new designation is made and approved.

(b) Whenever the board assumes the duties of an EA, it shall so notify the appropriate local governing body within 10 days of its assumption of the duties.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 43202–43208, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment of section heading, section and NOTE filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18352. Filing of Papers.

HISTORY

1. Amendment filed 2–21–78; effective thirtieth day thereafter (Register 78, No. 8).
2. Change without regulatory effect repealing Section 18352 filed 8–17–89 pursuant to Section 100, Title 1, California Code of Regulations (Register 89, No. 35).

§ 18353. Hearing Panel.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44800–44801, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Amendment filed 10–26–94; operative 10–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 43).
3. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18354. Appeals.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 45500–45504, Public Resources Code.

HISTORY

1. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).
2. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

§ 18355. Fee Schedules.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 43212, 43213 and 44006, Public Resources Code.

HISTORY

1. New section filed 8–3–77 as an emergency; effective upon filing (Register 77, No. 32).
2. Amendment filed 10–31–77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 45).
3. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

4. Repealer filed 4–12–2001; operative 5–12–2001 (Register 2001, No. 15).

Article 5.1. Inventory of Solid Waste Facilities Which Violate State Minimum Standards

§ 18360. Authority and Scope.

(a) This Article sets forth the procedures associated with the Inventory of Solid Waste Facilities Which Violate State Minimum Standards, and the enforcement roles of both the enforcement agency and the board.

(b) This Article is adopted pursuant to and for the purpose of implementing the California Integrated Waste Management Act of 1989 (Act) commencing with Section 40000 of the Public Resources Code, as amended. This article should be read together with the Act.

(c) Nothing in this Article limits or restricts the power of any federal, state, or local agency to enforce any provision of law that it is authorized or required to enforce or administer, nor to limit or restrict cities or counties from promulgating laws which are at least as strict as the regulations contained in this Article. However, no city or county may promulgate laws which are inconsistent with the provisions of this Article.

NOTE: Authority cited: Sections 40502, 43020 and 43021, Public Resources Code. Reference: Sections 40053, 43020 and 43021, Public Resources Code.

HISTORY

1. New article 5.1 (sections 18360–18368) and section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18361. Definitions.

The following definitions apply to Article 5.1.

(a) "Compliance schedule" means a written plan with milestone dates to achieve compliance for State Minimum Standard (SMS) violations. The compliance schedule could be proposed by the operator and approved by the enforcement agency or directed by the enforcement agency. The compliance schedule may be a stand–alone document or in the form of a Notice and Order pursuant to California Code of Regulations section 18304.

(b) "Executive director" means the executive director of the board or his/her designee.

(c) "Inventory" means a list of solid waste facilities operating in the State of California that have multiple violation(s) of the state minimum standards for solid waste handling and disposal. State minimum standards regulate the design and operation of solid waste facilities in order to protect public health and safety of the environment in Title 14 or Title 27, California Code of Regulations.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44104 and 44106, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18362. Notice of Intent to List a Facility for Inclusion on the Inventory.

(a) If, at a permitted facility, the enforcement agency documents the same State Minimum Standards violation(s) for two consecutive months during its inspections, then the board will send a notice of intent letter to the operator and landowner of the facility. This letter is a notification to the operator/owner of a permitted facility that the board intends to place the facility on the Inventory if the violation(s) is not corrected within 90 days of receipt of the notice. The notice of intent letter will be sent by certified mail.

(b) The board must consult with the enforcement agency verbally or in writing before sending a notice of intent letter to ensure that the notification is based on current information.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44104, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18363. Rescission of the Notice of Intent to List a Facility on the Inventory.

(a) If the enforcement agency provides written documentation that the facility is no longer in violation of all of the standard(s) listed in the notice of intent letter during the 90–day notice of intent period, then a rescission letter will be sent to the operator and landowner by the board. The rescission letter will be sent by certified mail.

(b) The enforcement agency must indicate compliance on an inspection report developed at the time compliance is determined or on the next inspection report after the determination.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44104, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18364. Inclusion of a Facility on the Inventory.

(a) If the violation(s) listed on the notice of intent letter is not corrected on or before the 90th day subsequent to the operator's receipt of the notice of intent letter, then the board will send another letter to the operator and landowner as notification that their facility has been placed on the Inventory. The inclusion letter will state the violation(s) to be listed on the Inventory, including those on the notice of intent letter that have not been complied with, and will be sent by certified mail.

(b) The board must consult with the enforcement agency verbally or in writing before sending out an inclusion letter to ensure that the notification is based on current information.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44104, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18365. Compliance Schedule.

(a) Within 15 business days following the date of the inclusion letter, the enforcement agency must issue a compliance schedule to the operator of the facility pursuant to PRC 44106(a). Within 5 business days of issuance of the compliance schedule, a copy will be sent to the board.

(b) The compliance schedule must have the final compliance date within one year from the date of the inclusion letter. The enforcement agency may issue a compliance schedule for more than one year but not to exceed two years, after informing the executive director in writing. A one–year extension beyond two years may be made prior to the expiration of the two–year period upon approval by the executive director. The executive director shall report any such approvals or disapprovals to the Board.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44106, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18366. Removal of a Family from the Inventory.

(a) When the enforcement agency provides the board with written documentation that the facility is no longer in violation of all the standard(s) listed on the inclusion letter, then a removal letter will be sent to the operator and landowner by the board. The removal letter will be sent by certified mail within 15 days of the receipt of the LEA documentation.

(b) The enforcement agency must indicate compliance in an inspection report developed at the time compliance is determined or in the next inspection report after the determination.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44104 and 44106, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18367. Publishing the Inventory.

(a) The Inventory will be published twice a year in board meeting minutes. Updates to the published Inventory will be made as needed.

(b) Each city council or county board of supervisors with a facility in its jurisdiction on the Inventory will receive a copy of the twice a year published Inventory. The jurisdiction will be notified when the facility is removed from the Inventory.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Section 44104, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

§ 18368. Penalties.

(a) The enforcement agency may issue enforcement orders as it deems appropriate pursuant to Public Resources Code, Division 30, Part 5 (commencing at section 45000) and Title 14, California Code of Regulations, Division 7, Chapter 5, Article 4 (commencing at section 18301).

(b) The enforcement agency may revoke the permit of a solid waste facility that does not meet the requirements contained in the compliance schedule issued by the enforcement agency until the violation(s) of state minimum standards which caused the facility to be included in the Inventory are remedied, pursuant to Public Resources Code, Division 30, Part 4, sections 44305 and 44306, and Title 14, California Code of Regulations, section 18307.

NOTE: Authority cited: Sections 40502 and 43020, Public Resources Code. Reference: Sections 44106 and 45000–45024, Public Resources Code.

HISTORY

1. New section filed 3–5–2003; operative 4–4–2003 (Register 2003, No. 10).

Article 6. Criteria, Priority and Administration of the Loan Guarantee Program Provided Pursuant to the Waste Disposal Site Hazard Reduction Act of 1987

§ 18400. Definitions.

For the purposes of this article, the definitions found in Public Resources Code sections 46021–46028 shall apply unless otherwise indicated. The following supplementary definitions shall also govern the construction of this chapter:

(a) "Approved lending institutions" means banking organizations, including national banking associations and state chartered commercial banks and trust companies; savings and loan associations; and state and federal agencies authorized to make loans, such as the California Pollution Control Financing Authority.

(b) "Borrower" means an owner or operator of a solid waste landfill who applies for a loan, and meets the eligibility requirements set forth in section 18401 of these regulations.

(c) "Default" means the failure of a borrower or debtor to pay, when due, the principal and/or the interest owed:

(1) on an installment if the note is written for installment payments; or

(2) on maturity of the note if the note is written for a lump sum payment; or

(3) on demand of the lender if the lender has exercised the note's acceleration clause.

In the absence of the conditions stated above, failure of the debtor to comply with terms or conditions attached to a note shall not in itself constitute a default that would allow the lender to file a claim against the guarantee.

(d) "Qualifying" corrective actions are those actions which are required by a state or local enforcement agency to protect the public health or the environment, including but not limited to, events related to water contamination, air pollution, and methane gas migration at solid waste disposal facilities, and which are neither provided for in the closure or postclosure maintenance plans for a facility which are required by section 18255 of this Title; nor are required to be set forth in a facility's closure and postclosure maintenance plans by sections 18261 through 18265.3 of this title.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46021–46028, 46300–46301, 46303 and 46350–46353, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18401. Loan Guarantee Criteria.

The Board may guarantee a loan only if it determines that the borrower meets the following criteria:

(a) The borrower has met the requirements, if applicable, of Public Resources Code section 46202.

(b) The loan guarantee, if provided, shall be used to secure a loan from an approved lending institution to implement a qualifying corrective action, which is required to be taken pursuant to section 41805.5 of the Health and Safety Code or section 13273 of the Water Code, or pursuant to directions from a state or local enforcement agency.

(c) The borrower is unable to secure adequate finances for a qualifying corrective action and has provided written evidence that this guarantee is necessary in order to secure adequate finances. Evidence may include, but is not limited to, credit evaluations from approved lending institutions indicating that a guarantee is needed in order for the loan to be made.

(1) The landfill owner or operator shall have attempted to secure financing through conventional funding mechanisms. including but not limited to increased tipping fees, to cover the cost of implementing the corrective action.

(2) The borrower is unable to obtain the required financing from any of its parent, subsidiary or associated enterprises.

(d) If the facility is in the process of closing,the borrower must be undertaking the planned closure and postclosure maintenance activities. If any part of the facility has already been closed, the borrower must be undertaking the planned closure and postclosure maintenance activities on the closed portion.

(e) The borrower is able to repay the loan.

(1) Evaluation of the borrower's ability to repay shall be based on the borrower's financial statements for the previous three (3) years.

(A) Each of these statements shall consist of a balance sheet, an income statement, and a statement of changes in financial position, all of which will have been prepared according to generally accepted accounting principles.

(B) If the latest complete financial statement is more than six (6) months old, an interim financial statement not older than sixty (60) days shall be included.

(2) If financial statements are not available, the borrower will provide other information acceptable to the Board which establishes a financial ability to repay the loan, such as:

(A) Income tax returns,

(B) Credit reports from Retail Credit Association and other credit reporting agencies,

(C) An appraisal report showing the value of real and personal property which is suitable as collateral.

(f) The loan which is to be guaranteed will be secured by collateral as the Board may require, such as, but not limited to, a mortgage or security interest in real estate, and buildings or personal property of the borrower. These items may only be subject to encumbrances that the Board may approve, such as, assignment or pledges of leases, and personal or corporate guarantees. Only the unencumbered equity portion of the property accepted as collateral shall be considered as collateral. Personal guarantees of the principals shall be required, unless reasons satisfactory to the Board are presented which justify not requiring such guarantees.

(1) Real state or stationary machinery or equipment pledged as a significant portion of collateral for repayment of a guaranteed loan shall be located within the State of California. Real estate pledged as collateral shall not include land which has been used as a solid waste disposal site.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46205 and 46303–46307, Public Resources Code.

HISTORY

1. Editorial renumbering of former section 18401 to section 18499, and new section 18401 filed 4–2–90; operative 5–2–90 (Register 90, No. 14). For prior history, see Registers 89, No. 1 and 81, No. 9.
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18402. Priority.

The allocation of loan guarantee funds by the Board shall be in accordance with the following order of priority:

(a) First priority will be given to applicants who need to secure financial resources for the mitigation of identified hazards to public health, damage to the environment, or nuisance to the public, of greatest severity, which are created by solid waste landfills and entail qualifying corrective actions as defined in section 18400 of this article.

(b) In the event that applications to mitigate hazards of equal severity are received, priority will be given to those applications where it is shown that there will be the greatest increase in the costs associated with the anticipated corrective action, if the corrective action is delayed.

(c) In the event that a priority between applications cannot be established by subsections (a) and (b), priority will be given to those applicants who demonstrate the best record of compliance with applicable law, regulations and permits required in the operation of landfill facilities.

(d) In the event that a priority between applications cannot be established by subsections (a) through (c), priority will be given to those applications with the smallest dollar value, in order to allow the maximum

[The next page is 806.31.]

number of guarantees to be made within the limits of the Loan Guarantee Program.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46306 and 46307, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18403. Loan Guarantee Size.

(a) The minimum loan amount that will be guaranteed is the smallest amount which an approved lending institution is willing to loan to the borrower.

(b) The maximum loan guarantee amounts shall be subject to the following limitations:

(1) A loan guarantee will not exceed $1,000,000 or the cost of the specified corrective action, whichever is less.

(2) The total loan guarantee amount awarded to any one borrower will not exceed fifty percent (50%) of the balance of funds in the Account allocated for loan guarantees at the time the guarantee is awarded.

The Board may guarantee a loan in excess of these limits if it determines that a guarantee with a greater value is necessary to mitigate hazards to public health, damage to the environment, or nuisance to the public.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46300, 46301 and 46303, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18404. Loan Guarantee Period.

(a) A loan guarantee will expire sixty (60) months after the effective date of the guarantee of on the date the loan is repaid, whichever occurs first.

(b) A guarantee may be renewed prior to its termination. The Board will determine whether to renew a guarantee using the same criteria and procedures used to establish a new loan guarantee.

(c) A guarantee may exceed sixty (60) months if the Board determines that hazards to public health will exist, or damage to the environment will ensue, or a nuisance to the public will persist if a guarantee with a longer life is not made.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Section 46303, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18405. Percentage of Guarantee.

The Board may guarantee no more than ninety percent (90%) of the principal balance to be loaned. This guarantee shall obligate the Board to purchase from the lender the guaranteed portion of a loan in the event of a default, subject to the terms and conditions of the guarantee as specified in sections

18412 and 18413, and in the loan guarantee contract.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Section 46303, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18406. Reserve Ratio.

The Board shall insure that at all times loan guarantee funds are held in reserve in an amount equal to no less than seventy–five percent (75%) of the total amount of the guaranteed principal and interest which is currently outstanding.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46300–46301, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18407. Loan Interest.

The rate of interest to be charged on guaranteed loans shall be negotiated between the lender and borrower. The lender shall inform the Board of agreed–upon interest rate for a loan at the time the loan is made.

NOTE: Authority cited: Sections 40502 and 46201, Public Resources Code. Reference: Section 46303, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18408. Application for Loan Guarantees; Fees.

(a) A landfill owner or operator shall file an application for a loan guarantee to fund a corrective action at the principal place of business of the Board.

(b) A landfill owner or operator shall file an application for a loan guarantee that includes information as specified in CIWMB Forms 201 (5/89), 202 (5/89) and 203 (5/89), which are incorporated by reference. Submittal of these forms is optional, but submittal of the information requested in these forms is mandatory.

(c) A lender shall include information on an applicant as specified in CIWMB Form 204 (5/89), which is incorporated by reference. Submittal of this form is optional, but submittal of the information requested in this form is mandatory.

(d) A minimum nonrefundable application fee of $250 or one–tenth (1/10) of one percent of the loan amount to be guaranteed, whichever is greater, shall be paid to the Board at the time of application to defray the Board's expenses in reviewing and processing the application.

NOTE: Authority cited: Sections 40502 and 46201, Public Resources Code. Reference: Sections 46204, 46308 and 46309, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18409. Board's Actions on Applications.

(a) Upon receipt of an application for a loan guarantee made by a landfill operator or owner, the Board shall review the application to determine if the application is complete. If the application is not complete, it shall be returned and the applicant notified of the deficiencies in the application within thirty (30) days. The applicant may resubmit an application to correct the identified deficiencies one time without paying a new application fee.

(b) Within ninety (90) days of the receipt of the complete application, the Board shall approve, modify or deny the application for a loan guarantee.

(c) Upon approval of a requested loan guarantee, the Chairman of the Board shall insure that the criteria and priority imposed by sections 18401 and 18402, have been fully met.

(d) Before a loan guarantee commitment is issued by the Board, the terms of a loan guarantee shall be set forth in a contract agreed to by the borrower, the lender, and the Board.

(e) In the event the Board disapproves any application, the Board will notify the applicant of the disapproval and the reasons for the disapproval. The notice shall include a statement of the applicant's right to appeal for reconsideration upon meeting the requirements set forth in the notice of disapproval. An applicant may appeal for reconsideration one time without paying a new application fee.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Section 46201, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18410. Report of Fund Condition.

(a) Guaranteed loans shall be subject to audit by the Board at any time, as the Board deems warranted. These loans shall be subject to audit by the Board from the time the guarantee is issued until three years after the guarantee has expired.

(b) If, in the course of an audit, all accounting records of the loan expenditures are not available. the borrower will produce these records within sixty (60) days. If no ledgers exist, the borrower shall provide the Board with copies of source documents such as invoices, canceled checks, time sheets and payroll registers. It is the responsibility of the borrower to maintain proper accounting records.

(1) In the event that an audit reveals that the borrower used any of the loan proceeds for purposes other than the corrective action for which the loan guarantee was awarded, the borrower will be in violation of the loan guarantee agreement. Dependent upon the scope of the misuse of funds, the Board shall take action, such as, requiring refunds of misspent funds, filing civil lawsuits or criminal prosecution.

(c) Lenders shall verify in writing the condition of loans upon request by the Board. The verification shall consist of the terms of the loan, the repayment schedule, monthly payments, and any other information needed to monitor the financial condition of loans guaranteed.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Section 46205, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18411. Default Claim Procedures.

The following default claim procedures shall apply in the event a guaranteed loan is in default:

(a) The lender shall notify the Board of the debtor's delinquency by mailed notice no later than the forty–fifth (45th) day of delinquency.

(b) The lender shall supply the Board with copies of the notes, security agreements, guarantees and a summary of the loan's history, including where the loan is domiciled, the payment record, and a copy of the lender's liquidation plan by the sixtieth (60th) day of delinquency.

(c) The lender may file with the Board its claim for payment under the terms of the guarantee as stipulated in section 18412, no earlier tan the ninetieth (90th) day of delinquency. This claim shall be for the guaranteed portion of the outstanding principal balance of the loan plus the accrued unpaid interest on the guaranteed amount.

(d) Within forty–five (45) days from receipt of a claim for payment as a result of a delinquency, the Board shall notify the lender of its intent to purchase from the lender the guaranteed portion of the note for the amount specified in the claim.

(e) From the time a loan payment is first delinquent until the guaranteed portion of the note and the accrued interest is paid by the Board, the lender shall take actions necessary to secure and exercise its position as a creditor.

(f) On purchase of the guaranteed portion of a defaulted note by the Board, the lender shall assign the guaranteed portion of the note, security interest, and guarantees to the Board. The Board shall take the action it deems necessary and appropriate in order to secure payment from the debtor or the debtor's assets.

(g) In the event the Board obtains recovery on a defaulted note after its purchase from the lender, the proceeds of the recovery, minus the cost of recovery, shall be shared between the Board and lender in proportion to the exposure the Board and lender respectively bore to the defaulted note.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46350–46353, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18412. Terms of Guarantee.

The Board shall be obligated to purchase no more than ninety percent (90%) of the outstanding principal balance and the accrued unpaid interest. In the event the lender requests the note be purchased, the Board shall pay the percentage of accrued interest guaranteed for the number of days the debtor has been delinquent, up to the day the Board notified the lender of its intent to purchase the note. Payment, however, shall be conditional upon the lender having met the conditions of the guarantee as stipulated in section 18413.

In the event that the lender has recovered part of the collateral or security interest prior to reimbursement by the Board, only the difference between the recovered money and the guaranteed portion of the principal and the interest may be claimed against the loan guarantee fund by the lender. If the lender or the Board obtains recovery on a defaulted note after purchase and reimbursement by the Board, the recovery shall be paid to the Board and the lender in proportion to the exposure the Board and the lender respectively bore to the defaulted note after the deduction of its collection costs.

No single claim shall, nor shall the aggregate of claims made by lenders, hereunder, exceed the amount allocated to the loan guarantee fund in the Account. The State shall not be liable or obligated in any way beyond the State money allocated to the loan guarantee fund in the Account.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46205 and 46350–46353, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

§ 18413. Conditions of Guarantee.

The Board shall honor its guarantee to a lender if:

(a) The debtor is in default of the note, as defined in section 18400(c).

(b) The lender has met the conditions for the issuance of the guarantee and has observed the lender's reporting and collection requirements as specified in sections 18410 and 18411.

(c) The lender has complied with the terms of the loan guarantee contract.

NOTE: Authority cited: Sections 46201 and 40502, Public Resources Code. Reference: Sections 46350–46353, Public Resources Code.

HISTORY

1. New section filed 4–2–90; operative 5–2–90 (Register 90, No. 14).
2. Change without regulatory effect amending section filed 5–17–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 27).

Chapter 5.9. California Integrated Waste Management Board— Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and, being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
1001 I STREET
SACRAMENTO, CA 95812

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 5.9, Division 7 of Title 14, of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 5.9. California Integrated Waste Management Board—Conflict of Interest Code

Section
18419. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 et seq., Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New chapter 6 (sections 18401–18467, not consecutive) filed 2–21–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–12–78 (Register 78, No. 8).
2. Repealer of chapter 6 (articles 1–5, sections 18401–18467, not consecutive and Exhibits A and B) and new chapter 6 (section 18401 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Editorial renumbering of former section 18401 to section 18499 (Register 90, No. 14).
4. Change without regulatory effect renumbering chapter and section headings filed 1–14–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
5. Amendment of addresses, General Provisions and Appendix filed 11–15–93 for procedural review and publication only; operative 12–15–93. Approved by Fair Political Practices Commission 9–16–93 (Register 93, No. 47).
6. Amendment of addresses, NOTE and Appendices filed 12–5–2002; operative 1–4–2003. Approved by Fair Political Practices Commission 10–21–2002 (Register 2002, No. 49).
7. Amendment of addresses and Appendix filed 7–21–2005; operative 8–20–2005. Approved by Fair Political Practices Commission 3–3–2005 (Register 2005, No. 29).

Chapter 6. Permitting of Waste Tire Facilities and Waste Tire Hauler Registration and Tire Manifests

Article 1. General

§ 18420. Applicability.

(a) The operator of a waste tire facility shall acquire a waste tire facility permit in accordance with the requirements of this Chapter and PRC section 42808, unless any of the following conditions exist:

(1) The waste tires are stored or disposed at a permitted solid waste disposal facility. The permit of the solid waste facility shall be revised pursuant to Public Resources Code (PRC) section 44014 and shall conform to the requirements of Division 7, Chapter 3, Article 5.5.

(2) The facility is using fewer than 5,000 waste tires for agricultural purposes and the waste tires have been rendered incapable of holding accumulations of water.

(3) The facility is storing fewer than 500 waste tires.

(4) The facility is a tire treading business and not more than 3,000 waste tires are kept on the premises.

(5) (Reserved).

(6) The facility is an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores waste tires on the premises of the auto dismantler for less than 90 days if not more than 1,500 waste tires are ever accumulated on the dismantler's premises.

(7) The facility is a tire dealer who stores waste tires on the dealer's premises for less than 90 days if not more than 1,500 waste tires are ever accumulated on the dealer's premises.

(b) For purposes of determining the applicability of this Chapter 6, altered waste tires shall be counted as passenger tire equivalents (PTE).

(c) (Reserved)

(d) For the purposes of Chapter 6, Articles 2 through 7 and Articles 9, 10 and 11 apply to operators and/or businesses described under Chapter 6, Article 1.

(e) A "used tire dealer" is only authorized to lawfully accept used or waste tires without a waste tire facility permit if the used tire dealer is in compliance with Section 17225.820, Article 4.1, Chapter 3 and has fewer than 1500 waste tires in accordance with Section 42808(c).

NOTE: Authority cited: Sections 40502, 42820, 42830 and 42966, Public Resources Code. Reference: Sections 42806.5, 42808, 42820, 42830, 42831, 42832, 44014 and 42950, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsections (a)–(a)(2) and (b), and adoption of subsections (c)–(d)(2) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of Chapter heading, new subsections (e) and (f), and amendment of NOTE filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
10. Amendment of chapter heading, new subsections (e) and (f) and amendment of NOTE refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
11. Amendment of chapter heading, new subsections (e)–(f) and amendment of NOTE refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
12. Amendment of chapter heading, new subsections (e)–(f) and amendment of NOTE refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
13. Change without regulatory effect amending subsection (d)(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
14. Certificate of Compliance as to 1–18–95 order including amendment of subsection (e) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
15. Repealer of subsection (a)(4), subsection renumbering, new subsection (a)(5), repealer of subsections (b) and (c), new subsection (b), subsection relettering, and amendment of newly designated subsection (c)(2) filed 6–16–98 as an emergency; operative 6–16–98 (Register 98, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–14–98 or emergency language will be repealed by operation of law on the following day.
16. Reinstatement of section as it existed prior to 6–16–98 emergency amendment by operation of Government Code section 11346.1(g) (Register 98, No. 46).
17. Repealer of subsection (a)(4), subsection renumbering, new subsection (a)(5), repealer of subsections (b) and (c), new subsection (b), subsection relettering, and amendment of newly designated subsection (c)(2) filed 11–9–98 as an emergency; operative 11–9–98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–9–99 or emergency language will be repealed by operation of law on the following day.
18. Repealer of subsection (a)(4), subsection renumbering, new subsection (a)(5), repealer of subsections (b) and (c), new subsection (b), subsection relettering, and amendment of newly designated subsection (c)(2) refiled 3–5–99 as an emergency; operative 3–5–99 (Register 99, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–6–99 or emergency language will be repealed by operation of law on the following day.
19. Repealer of subsection (a)(4), subsection renumbering, new subsection (a)(5), repealer of subsections (b) and (c), new subsection (b), subsection relettering, and amendment of newly designated subsection (c)(2) refiled 7–2–99 as an emergency; operative 7–6–99 (Register 99, No. 27). A Certificate of Compliance must be transmitted to OAL by 11–3–99 or emergency language will be repealed by operation of law on the following day.
20. Emergency action of 7–2–99 refiled 10–29–99 as an emergency, including transposition of subsections (a)(4) and (a)(5), repealer of subsection (b) and subsection relettering; operative 10–29–99 (Register 99, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–28–2000 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 10–29–99 order transmitted to OAL 2–22–2000 and filed 3–31–2000 (Register 2000, No. 13).

22. Amendment of section and NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).
23. Amendment of chapter heading filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18421. Scope.

NOTE: Authority cited: Sections 40502, 42020 and 42830, Public Resources Code: Reference: Sections 42820 and 42830, Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL by 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. A Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–20–92 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18422. Definitions.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 21068, 21082.2, 42800, 42820 and 42830, Public Resources Code and Sections 15002, 15064 and 15382, State CEQA Guidelines, Title 14, CCR.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Repealer of article 2 heading and section and amendment of NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 2. Review of Permit Applications

§ 18423. Filing of Application.

(a) Every operator of a new or existing major or minor waste tire facility shall submit to the Board a completed original and two (2) copies of the waste tire facility permit application, as specified in Article 4 of this Chapter.

(b) Upon receipt of the application, the Board shall mark the application package with the date of receipt. Within 30 days of receipt, the Board shall examine the application package to determine whether it meets the requirements contained in this chapter and either accept the application as complete or reject the application. If the Board finds the application meets the requirements, the application shall be accepted as complete. If the Board determines that the application does not conform to the applicable requirements, it shall notify the applicant in writing enumerating the grounds for rejection.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42822, 42830, 42832 and 42833, Public Resources Code and Sections 15376 and 65943, Government Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Renumbering of former article 3 to article 2 and amendment of section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18424. Amendments to Application.

(a) At any time after an application for a waste tire facility permit has been made and before issuance or denial of a permit or revision thereof, the applicant shall notify the Board of any changes to the required information on the application. Such notice shall be given by the filing of an amendment to the application.

(b) If the Board determines that the amendment significantly alters the nature of the application, the Board may deem the amendment a new application. The new application shall supersede the previous application. In this case the time for the Board to act on the new application shall be computed from the date of filing of the amendment.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42822, 42830, 42832 and 42833, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (a) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 3. Permit Issuance, Renewal, Revision, Revocation, Denial, Suspension, Reinstatement, Change of Owner, Operator, and/or Address

§ 18425. Permit Issuance.

(a) With the exception of subsection (d), within 180 days of accepting a completed application, the Board shall either issue a permit or deny the issuance of a permit in accordance with Subsections (b) and (c), respectively, unless the applicant requests an extension of time.

(b) Upon the applicant's compliance with this Chapter, the Board may make findings and issue the permit as provided in this Article. The permit shall specify the conditions under which the waste tire facility shall comply with this Chapter.

(c) If the Board denies the issuance of a permit, it shall accompany its denial with a written explanation of its action.

(d) If the Board is lead agency for the project, as defined in Government Code section 65929, for which an environmental impact report must be prepared pursuant to PRC section 21100, the Board shall have one year, from the date the application was accepted as complete, to issue or deny the issuance of a permit in accordance with subsections (b) and (c), respectively. If there has been an extension of time pursuant to PRC section 21100.2 to complete and certify the environmental impact report, the Board shall issue a permit or deny the issuance of a permit in accordance with subsections (b) and (c), respectively, within 90 days after certification of the environmental impact report. This extension of time may be extended once for an additional period, not to exceed 90 days, upon consent of both the applicant and the Board.

(e) A copy of the current permit shall be made available upon request to the Board or an authorized employee or agent of the Board during an inspection of the facility.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821, 42822, 42832, 42833, 42840 and 42841, Public Resources Code and Sections 15376 and 65920–65961, Government Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of printing error in article heading (Register 93, No. 5).
6. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
7. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 4 (Register 93, No. 26).
9. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (d) and adoption of subsection (f) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
10. Renumbering and amendment of former article 4 to article 3, repealer of subsection (e), subsection relettering and amendment of NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18426. Permit Renewal.

(a) Except as provided in Section 18429, of this Chapter every permit shall expire five years after its issuance, renewal, or most recent revision.

(b) At least 395 days prior to the expiration of an existing waste tire facility permit, the operator shall submit a completed original application for a waste tire facility permit and two (2) copies to the Board.

(c) Sections 18423 through 18425 of this Chapter shall apply to the submittal and review of the application for renewal and the issuance of a permit.

(d) If the Board determines upon review of the application for renewal that revision of the permit is not required, it shall inform the applicant of its decision and the basis for its decision.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42822, 42830, 42832, 42833, 42840 and 42841, Public Resources Code and Section 15376, Government Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18427. Permit Revision.

(a) Any permittee proposing to make a substantial change in the design or operation of the waste tire facility, the operator of the waste tire facility shall apply for a revision of the permit. The application shall be made in the manner specified in sections 18423 and 18424 of Article 2.

Except as otherwise provided in this section, the application shall be handled in the same manner as an application for a new permit.

(b) The Board may require the permittee to submit an application for revision if the revision is required to reflect changed state or federal statutes or regulations applicable to the facility.

(c) Except as provided in Paragraph (b) of this section, the permittee may at any time withdraw an application by submitting a written request to the Board.

(d) The permittee shall notify the Board in writing of each administrative change no later than seven (7) business days after the change is effective. Administrative changes shall include but are not limited to, changes to any information in the application that does not apply to the design or operation of the facility.

(e) The Board will review the information provided and determine whether or not a permit revision is required. The applicant shall be notified in writing if the information is incomplete or if it is determined that a permit revision is required. If the owner/operator has satisfied all the requirements, Board staff will make applicable administrative changes to the permit and forward the applicable pages of the permit to the permittee.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 21068, 21082.2, 42820, 42822, 42830 and 42833, Public Resources Code and Sections 15002, 15064 and 15382, State CEQA Guidelines, Title 14, CCR.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of section heading and text transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of section heading, section and NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18428. Change of Owner, Operator, and/or Address.

Owners and/or operators of a facility who plan to sell, encumber, transfer or convey the ownership or operation of the facility or land to a new owner or operator, or who plan to change their address shall notify the Board 30 days prior to the date of the planned transaction. The new owner or operator is required to submit the following information:

(1) Names(s), address(es), where notice can be sent and phone numbers(s) of the new owner/operator;

(2) Documentation that the new owner/operator meets the financial assurance and operating liability requirements, when applicable;

(3) A signed affidavit certifying that the owner/operator has read the governing permit and conditioning documents and will operate in accordance with the terms and conditions of the existing WTFP and conditioning documents and that all new information submitted is correct; and

(4) Amendments to the application package to reflect the change in owner/operator, and/or facility name.

The Board staff will make the applicable administrative changes to the permit and forward the applicable pages of the permit to the permittee.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820 and 42830, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14). For prior history, see Register 93, No. 45.

Article 3.5. Enforcement Criteria for Waste Tire Facilities

§ 18429. Penalty Schedule for Administrative Complaints.

(a) Unpermitted Waste Tire Facilities:

(1) Determine in Table 1 whether or not this act is negligent or intentional, and whether is it the first, second, or third offense (intentional only). Match it up to the amount of tires at the site, and determine the base fine. Table 1 is to be used for violations of Public Resources Code, sections 42823, 42824, 42833, 42834, and California Code of Regulations, section 18420(a). Multiply the base fine by the applicable risk factor in Table 2A or Table 2B, dependent upon whether it is negligent or intentional, and determine the total fine/day that will be set. Multiply the total fine/day by the number of days past due with the Clean Up & Abatement Order deadline.

Table 1#

Type Of Site/Operator	*500–4,999 Tires*	*5,000–9,999 Tires*	*10,000–19,999 Tires*	*20,000–49,999 Tires*	*50,000 or More Tires*
Negligent–Capacity					
Unpermitted WTF	$500	$1,000	$1,500	$2,000	$3,000
Unpermitted WTF (*2nd Offense, etc.*)	$2,000	$2,500	$3,000	$3,500	$4,000
Intentional–Capacity					
Unpermitted WTF	$1,000	$2,000	$3,000	$4,000	$6,000
Unpermitted WTF (*2nd Offense*)	$4,000	$5,000	$6,000	$7,000	$8,000
Unpermitted WTF (*3rd Offense, etc.*)	$6,000	$7,000	$8,000	$9,000	$10,000

Total amount of penalty not to exceed maximum amounts specified in PRC sections 42825 and 42835.

Table 2A

Enhancement Issue–Negligent Act	*Risk Factor*
Serious threat to Public Health and Safety, or the Environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet.	1.00
Moderate threat to Public Health and Safety, or the Environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	0.75
No potential threat to Public Health and Safety, or the Environment.	0.50

Table 2B

Enhancement Issue–Intentional Act	*Risk Factor*
Serious threat to Public Health and Safety, or the Environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet.	1.5
Moderate threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	1.25
No potential threat to public health and safety, or the environment.	1.00

(b) Permitted Waste Tire Facilities:

(1) Determine in Table 3 whether or not this act is negligent or intentional, and whether is it the first, second, or third offense. Match it up to the amount of tires exceeding the permitted capacity at the site, and determine what the base penalty is. Table 3 is to be used for violations of the California Code of Regulations, sections 17351(c) and 17354 (a) & (b), or permit capacity only. Multiply the base penalty by the applicable risk factor in Table 4A or Table 4B and multiply that number by the amount of days past the Clean Up & Abatement Order deadline to determine the total fine. Determine what other types of violations were observed in Table 5, determine the appropriate penalty amount –in accordance with the criteria established in PRC section 42852, and add these penalties to the total fine.

Table 3#
(For Violations Of 17351(c), 17354 (a) & (b), Or Permit Capacity only)

Type Of Site/Operator	*1–4,999 Tires**	*5,000–9,999 Tires**	*10,000–19,999 Tires**	*20,000–49,999 Tires**	*50,000 or More Tires**
Negligent Capacity					
Permitted WTF	$500	$1,000	$1,500	$2,000	$3,000
Permitted WTF (*2nd Offense, etc.*)	$2,000	$2,500	$3,000	$3,500	$4,000
Intentional Capacity					
Permitted WTF	$1,000	$2,000	$3,000	$4,000	$6,000
Permitted WTF (*2nd Offense*)	$4,000	$5,000	$6,000	$7,000	$8,000
Permitted WTF (*3rd Offense, etc.*)	$6,000	$7,000	$8,000	$9,000	$10,000

* Over permitted capacity
# Total amount of penalty not to exceed maximum amounts specified in PRC sections 42825 and 42835.

Table 4A

Enhancement Issue–Negligent Act	*Risk Factor*
Serious threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet	1.00
Moderate threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	0.75
No potential threat to public health and safety, or the environment.	0.50

Table 4B

Enhancement Issue–Intentional Act	*Risk Factor*
Serious threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within 1,000 feet.	1.5
Moderate threat to public health and safety, or the environment. Residential homes, freeway/major roads, lakes, rivers, waterways and airports within one mile, but more than 1,000 feet.	1.25
No potential threat to public health and safety, or the environment.	1.00

Table 5

Additional Penalties Type of Violations	*Range of Penalty*
14 CCR 17351(a) & (b) Communications and other site equipment	$500–$5,000
14 CCR 17352 Facility Access and Security	$500–$5,000
14 CCR 17353 Vector Control Measures	$500–$5,000
14 CCR 17354 [except (a)&(b)] Parameters For Storage of Waste Tires Outdoors	$500–$5,000
14 CCR 17356 Indoor Storage Parameters	$500–$5,000
14 CCR 18427 Permit Revision	$500/day (minor) $1,000/day (major)
14 CCR 18470 Financial Assurance Requirements for Closure	$500–$5,000
Violation of any Permit conditions (except capacity violation)	$500–$5,000
14 CCR 18423(a) Filing of Application	$500–$5,000
14 CCR 18440(a) Compliance with Section 18441	$500–$5,000
14 CCR 18440(b) Submit Updated Closure Plan	$500–$5,000
14 CCR 18440(c) Approval of Major WTF Closure Plan Prior to Closure	$500–$5,000
14 CCR 18440(d) Approval of Minor WTF Closure Plan Prior to Closure	$500–$5,000
14 CCR 18440(e) Immediate Closure	$500–$5,000
14 CCR 18441(a) Closure Procedures	$500–$5,000
14 CCR 18443(d) Inspection Access	$500–$5,000

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Section 42825, 42835, 42850 and 42852, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. New article 3.5 (section 18429) and repealer and new section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18430. Reinstatement of Suspended and Revoked Permits.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42830 and 42841, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

Article 4. Permit Application

§ 18431. Application.

An application for a new permit or an application for renewal or revision of an existing permit, for a major waste tire facility, shall include items (a) through (h) of this section. An application for a new permit or an application for renewal or revision for a minor waste tire facility permit shall include items (a) through (d) and (h) of this section.

(a) A complete form CIWMB 500 "Waste Tire Facility Permit Application" (9/02), which is incorporated herein by reference. (See Appendix A.)

(b) A completed form CIWMB 501 "Waste Tire Facility Operation Plan" (9/02) as specified in section 18432 of this Article, which is incorporated herein by reference. (See Appendix A.)

(c) A completed form CIWMB 502 "Waste Tire Facility Environmental Information" (9/02) which is incorporated herein by reference. (See Appendix A.)

(d) A completed form CIWMB 503 "Waste Tire Facility Emergency Response Plan" (9/02) as described in section 18433 of this Article. This form is incorporated herein by reference. (See Appendix A.)

(e) A completed form CIWMB 504 "Waste Tire Facility Closure Plan" (9/02). This form is incorporated herein by reference. (See Appendix A.)

(f) A completed Reduction/Elimination Plan as specified in section 18434 of this Article.

(g) Financial assurance mechanisms and operating liability as specified in Articles 9 and 10 of this Chapter. These Article 9 and 10 forms are incorporated herein by reference. (See Appendix A.)

(h) Verification that applicable local, state, and federal permits and approvals have been acquired by the applicant.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 21068, 21082.2, 42821 and 42832, Public Resources Code, Sections 15002, 15064 and 15382, State CEQA Guidelines and Sections 65940 and 65941, Government Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsections (a)–(e) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
10. Renumbering of former article 5 to article 4 and amendment of section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18432. Operation Plan.

(a) The Operation Plan, as required by 18431(b) shall demonstrate conformance with the technical standards contained in 14 CCR, Division 7, Chapter 3, Article 5.5.

(b) The operator shall file amendments to the Operation Plan whenever necessary to keep the information contained in it current.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 41700, 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
10. Amendment filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18433. Emergency Response Plan.

(a) The operator of the waste tire facility shall maintain a copy of the Emergency Response Plan at the facility. At the time of permit issuance the approved Emergency Response Plan shall be forwarded to the local fire authority by the permittee. The plan shall be revised as necessary to reflect any changes in the operations of the waste tire facility or requirements of the local fire authority. The local fire authority and the Board shall be notified of any changes to the plan within 30 days of the revision.

(b) The operator of the facility shall immediately notify the Board in the event of a fire or other emergency if that emergency has potential significant off–site effects. Within 30 days of any such emergency, the operator shall submit to the Board a written report describing the cause(s) of the emergency, the results of actions taken, and an analysis of the success or failure of these actions.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).

6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (a) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
10. Amendment filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18434. Reduction/Elimination Plan.

(a) The operator of a major waste tire facility shall submit a detailed plan and implementation schedule for the elimination or substantial reduction of existing tire piles pursuant to Public Resources Code section 42821(b).

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18435. Closure Plan.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

Article 5. Closure

§ 18440. Closure Commencement.

(a) The operator of a major or minor waste tire facility shall comply with the requirements of section 18441 of this Article when closing the waste tire facility.

(b) The operator of a major waste tire facility shall submit to the Board for approval an updated Closure Plan (Part B), Form CIWMB 504 (9/02) as specified in section 18442 of this Article, at least 120 days prior to the anticipated closure of the site. This time period shall not apply to facilities required to close in accordance with subsection (e).

(c) The operator of a major waste tire facility shall receive approval in writing from the Board of the updated Closure Plan, prior to beginning closure of the site.

(d) Operators of minor waste tire facilities shall receive written approval from the Board concerning the final planned disposition of waste tires prior to commencing closure. Approval shall be based upon the criteria in section 18441(a)(3) of this Article.

(e) The operator of a major or minor waste tire facility shall cease to accept waste tires and shall immediately begin closure of the site in compliance with any closure conditions established in the permit and these regulations, and shall notify the Board in writing upon commencement, after receiving written approval from the Board in accordance with subsections (c) and (d), if:

(1) The waste tire facility permit expires and renewal of the permit is not applied for, or it is revoked or denied; or

(2) A Board order to cease operation is issued; or

(3) The operator is unable to comply with the Articles in this Chapter or Article 5.5 of Chapter 3.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Renumbering of former article 6 to article 5 and amendment of subsection (b) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18441. Closure Conditions.

(a) In closing the waste tire facility, the operator shall:

(1) Close public access to the waste tire facility;

(2) Post a notice at the entrance indicating to the public that the site is closed and the location of a site where waste tires can be deposited;

(3) Remove all waste tires and tire residues in accordance with Article 8.5 of this Chapter to a destination facility(s) approved by the Board in the Closure Plan. Board approval of destination facilities, within the state, shall be based on the following criteria:

(A) Destination facilities eligible for approval by the Board shall use one or more of the methods delineated in Public Resources Code section 42821(b). If waste tires are transported first to a collection facility, the operator of the closing facility shall provide documentation to the Board

that the waste tires shall be transported from the collection facility to a destination facility approved by the Board within 90 days of receipt of each shipment of waste tires from the closing facility.

(B) A Collection or destination facility shall meet the requirements of subsection (A), and the requirements associated with any of the following facility types:

(i) the facility is a solid waste disposal facility permitted in accordance with section 18420(a) of Article 1; or

(ii) the facility is a major or minor waste tire facility permitted under this Chapter; or

(iii) the facility meets at least one of the requirements of section 18420(a)(2) and (4)–(6) of Article 1 and it meets the requirements of section 18420(b) of Article 1.

(4) Remove any debris to a recycling facility or a permitted solid waste disposal site; and

(5) Notify the Board when the closure activities are completed and the site is ready for inspection, and furnish the Board with manifests and trucking receipts or other documentation that tires and tire residues have been removed from the site and disposed of properly.

(b) After receiving notification that site closure is complete, the Board may inspect the site. If all procedures have been completed in accordance with these regulations, and the waste tires have been transported to an approved destination facility if the waste tires were first transported to a collection facility as specified in section 18441(a) of this Article, the Board shall approve the closure of a major waste tire facility in writing.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsections (a)(3)–(a)(3)(B)(i), (a)(3)(B)(iii) and (a)(5) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18442. Closure Plan.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 11–3–93; operative 11–3–93 (Register 93, No. 45).
2. Repealer filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 6. Inspection of Waste Tire Facilities

§ 18443. Inspection.

(a) The Board and/or the Enforcement Agency (EA) for the jurisdiction in which the waste tire facility is located shall inspect waste tire facilities for compliance with the applicable waste tire storage and disposal standards and any terms and conditions specified in the waste tire facility permit.

(b) Prior to the initial issuance, renewal or revision of a major or minor waste tire facility permit the Board or the EA shall inspect the facility. After the issuance of a permit, a major waste tire facility shall be inspected by the EA at least once annually. Minor waste tire facilities shall be inspected at least once every two and a half years.

(c) Reports of inspections conducted by the EA shall be submitted to the Board within 30 days of the date of inspection. If the inspection identifies a violation of the permit that is an endangerment to public health, safety or the environment, the EA shall file an inspection report within 7 days of the inspection.

(d) Upon presentation of proper credentials, the Board or an authorized Board employee or agent, shall be allowed to enter the facility during normal working hours to examine and copy books, papers, records, or memoranda pertaining to the facility, and to conduct inspections and investigations pertaining to the facility.

NOTE: Authority cited: Sections 40502, 42820, 42821, 42830 and 42832, Public Resources Code. Reference: Sections 42825, 42834, 42835 and 42845, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction reinserting article 7 heading (Register 92, No. 40).
5. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
7. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 5 (Register 93, No. 26).
9. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
10. Renumbering of former article 7 to article 6 and amendment of section and NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 7. Records

§ 18445. Record Keeping.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820 and 42830, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer of section transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Renumbering of former article 8 to article 7 filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18447. Retention of Records.

Copies of all records required to be kept under this Chapter shall be retained by the operator for three (3) years at the place of business and shall be made available at the site during normal business hours for inspection and photocopy by any representative of the Board or any individual authorized by the Board.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42830 and 43832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18448. Certification of Records.

(a) All records, summaries or reports submitted to the Board as required by this Chapter shall be signed by a person responsible for preparing and reviewing such documents as part of his or her duties in the regular course of business.

(b) Any person signing a document submitted under this Chapter shall make the following certification:

I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section, with amendments to CIWMB 154, refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments of subsection (a) and repealer and adoption of forms transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
10. Amendment of NOTE filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Article 8.5. Waste Tire Hauler Registration and Manifesting Requirements for Used and Waste Tire Haulers, Retreaders, Used and Waste Tire Generators, and Used and Waste Tire End–Use Facilities

§ 18449. Scope.

(a) This Article specifies the procedures for waste tire hauler registration and tire manifest system requirements for waste tire haulers, retreaders, waste tire generators, and end–use facilities, including reporting and documentation requirements.

(b) In addition to the regulations in this article, statutory provisions contained in Sections 42950 through 42967 of the Public Resources Code govern the Waste Tire Hauler Registration Program.

(c) This article contains different reporting provisions for retreaders than for other waste tire haulers. However, the Board's new Comprehensive Trip Log reporting system will apply the same provisions to retreaders as to other waste tire haulers. In order to provide a transition period for retreaders, the existing provisions will continue to apply to retreaders during the period of time that emergency Comprehensive Trip Log provisions are in effect. However, upon the effective date of non–emergency Comprehensive Trip Log provisions in this Article, the Retreader Trip Log shall no longer be a valid CIWMB form and retreaders shall not be required to comply with sections 18450(a)(12), (19), and (20), 18456.2.1, 18459.2.1(b), 18460.2.1, and 18461(a)(1). The three year record retention provision in sections 18459.3(b)(1) and 18462(b)(1) shall continue to apply to retreaders.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42950 et seq., Public Resources Code.

HISTORY

1. New Article 8.5 (sections 18449–18462.2) and section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New article 8.5 and section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New article 8.5 and section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New article 8.5 and section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer and new section heading, and amendment of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of article heading, repealer and new subsection (a) and amendment of subsection (b) filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of article heading and subsection (a) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of article heading and subsection (a) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
10. Amendment of article heading and subsection (a) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
11. Amendment of article heading and subsection (a) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 4–25–2005 order, including new subsection (c), transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).

13. Amendment of article heading and subsection (a) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.

14. Amendment of article heading and subsection (a) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.

15. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18450. Definitions.

(a) For the purposes of this Article, the definitions found in: Public Resources Code Sections 42950–42967; and Chapter 3, Article 4.1, of this Division (commencing with Section 17225.701); and the following shall apply:

(1) "Board" means the California Integrated Waste Management Board.

(2) "Bond" means a surety bond issued by a California admitted insurance carrier.

(3) "Business Name" means the name of the operation registered with the local government of the State of California; the business license name.

(4) "Calendar Year" means January 1 through December 31 of any year.

(5) "CIWMB" means the California Integrated Waste Management Board.

(6) "Civil Penalty" means a fine assessed as a result of a violation of an applicable provision.

(7) "Collection Center" See Facility.

(8) "Commingled" means inextricably mixed together, in that the waste components cannot be economically or practically separated.

(9) "Comprehensive Trip Log" means the California Uniform Waste and Used Tire Manifest System form developed by the Board pursuant to Public Resources Code, section 42961.5. The Comprehensive Trip Log is attached hereto as Appendix A (CIWMB 203, 03/05) and incorporated by reference herein.

(10) "Electronic report" means electronic submittal of manifest information to the CIWMB by means of Electronic Data Transfer or Web–based data entry in accordance with the requirements set forth in § 18459.1.2.

(11) "EDT Form" means a paper reporting form, approved by the Board, that is used by the hauler or responsible party for reporting manifest information in lieu of the required Comprehensive Trip Log. The EDT Form will contain the information required on the Comprehensive Trip Log.

(12) "End–Use Facility" means the facility where used or waste tires are unloaded.

(13) "Facility" means a waste tire facility, as defined in Public Resources Code Section 42808, a landfill authorized pursuant to Public Resources Code Section 42866, a facility authorized to accept used or waste tires pursuant to a state or local agency permit, or a facility which lawfully accepts used or waste tires as authorized under Title 14, Section 18420.

(14) "Incidental Revenue" means 10% or less of total annual revenue for purposes of Public Resources Code Section 42954(a)(7).

(15) "Invoice" means a document provided by a Retreader that contains the date of the transaction, the name of the customer and address, the Tire Program Identification Number of the generator or end use facility, the name of the retreader and address, the quantity of tire casings shipped.

(16) "Load" means a single transaction (a pick up or delivery) of used or waste tires between the hauler and generator or the hauler and end–use facility. There may be one or more loads on a trip.

(17) "Local Government" means a county, city, city and county, special district, joint powers agency or other political subdivision of the state.

(18) "Manifest Form" means the California Uniform Waste and Used Tire Manifest Form developed by the Board that shall be completed by the waste tire hauler, waste tire generator, or facility, which shall accompany each shipment of used or waste tires. The Manifest Form is attached hereto as Appendix A (Form #647, 01/03) and incorporated by reference herein.

(19) "New Tire Adjustment" means return or replacement of a new tire that is defective or damaged.

(20) "Person" includes an individual, sole proprietorship, co–partnership, Limited Liability Company, corporation, political subdivision, government agency, or municipality.

(21) "Place of Business" means the actual physical location where waste or used tires are picked up from, delivered to, or stored.

(22) "Registered Vehicle Owner" means the person in whom title is vested and/or to whom the vehicle is registered with the Department of Motor Vehicles for any jurisdiction, domestic and foreign, in which the vehicle is registered.

(23) "Retreader" means a business, person, entity, individual, sole proprietorship, co–partnership, Limited Liability Company, corporation, who is in the business of retreading or recapping tire casings for reuse. The Retreader shall have a Manufacturer 3–Digit Identification issued by the United States Department of Transportation pursuant to Title 49, Code of Federal Regulations, § 574.5. A completed original form CIWMB 173 (4/04) "Retreader Self–Certification" which is attached hereto as Appendix A (CIWMB 173, 4/04) and incorporated by reference herein shall be completed by the Registered Waste Tire Hauler before being deemed by CIWMB to be a self–certified retreader. Notwithstanding provisions of the manifesting requirements, the Retreader is a registered waste tire hauler and shall comply with all waste tire hauler requirements.

(24) "Retreader Trip Log" means the California Retreader Trip Log developed by the Board that shall be completed by the Retreader and shall accompany the tire casings during shipment for inspection, retreading or recapping. For the purposes of the Retreader Trip Log, this form shall only be used during the shipment of tire casings from the generator to the Retreading facility and on the return trip back to the generator, and the ownership of the tire casing(s) shall not change during either shipment. The Retreader Trip log meets the intent of Public Resources Code, section 42961.5 and is attached hereto as Appendix A (CIWMB 180, 03/04) and incorporated by reference herein.

(25) "Revenue" is annual net income earned.

(26) "Tire casing" is the carcass of a reusable tire that after inspection can be retreaded or recapped by a Retreader.

(27) "Tire Trip Log" means the California Uniform Waste and Used Tire Trip Log developed by the Board that shall be completed by the waste tire hauler and shall accompany the waste tire hauler for each shipment of used or waste tires. The Tire Trip log is attached hereto as Appendix A (Form #648, 01/03) and incorporated by reference herein.

(28) "Trip" means the hauling of waste or used tires that begins with a waste tire hauler's first pick–up of used or waste tires from a generator and ends with the hauler's last delivery of used or waste tires to an end–use facility, but in no case shall a trip exceed five (5) consecutive days.

(29) "Unregistered Hauler & Comprehensive Trip Log Substitution Form" is the form to be completed by the generator and end use facility pursuant to the requirements set forth in §§ 18461(b) and 18462(c). The Unregistered Hauler & Comprehensive Trip Log Substitution Form is attached hereto as Appendix A (CIWMB 204, 03/05) and incorporated by reference herein.

(30) "Used and Waste Tire Generator" means any person who provides used or waste tires to a waste tire hauler; including, but not limited to auto dismantlers and automotive fleet service centers.

(31) "Vehicle Description" includes the year, the model, the make of the vehicle, Vehicle Identification Number as defined in California Ve-

hicle Code Section 671, and Vehicle License Plate Number, including state of issuance, as defined in California Vehicle Code Section 4850(a).

(32) "Waste Tire Hauler Decal" is a decal issued by the Board, printed on specially prepared paper with a unique number, for affixing to the lower right hand corner of the windshield.

(33) "Waste Tire Hauler Registration" means the documents, including the decal and registration form, issued by the Board, which authorizes the holder of the documents to legally haul waste tires within California for the period of issuance.

(34) "Waste Tire Manifest System" means the California Uniform Waste and Used Tire Manifest System which includes the Comprehensive Trip Log, Retreader Trip Log, Manifest, and Tire Trip Log forms developed by the Board and all procedures and regulations applicable to the transportation of the used or waste tires from point of origin to final destination of the used or waste tires.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42954, 42955, 42956, 42958 and 42961.5, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. New subsections (a)(12), (a)(19), (a)(20) and (a)(22) and subsection renumbering filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
8. Refiling of 8–23–2004 emergency, including new Appendix A, 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
10. New subsections (a)(12), (a)(19), (a)(20) and (a)(22), subsection renumbering and new Appendix A filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction relocating forms CIWMB 173 and CIWMB 180 from section 18450 to section 18831, Appendix A (Register 2005, No. 24).
12. New subsections (a)(9)–(a)(11), (a)(21) and (a)(29), subsection relettering and amendment of newly designated subsections (a)(18), (a)(23), (a)(24), (a)(26), (a)(30) and (a)(34) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order, including amendment of subsections (a)(15), (a)(19) and (a)(26), transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. New subsections (a)(9)–(a)(11), (a)(21) and (a)(29), subsection relettering and amendment of newly designated subsections (a)(18), (a)(23), (a)(24), (a)(26), (a)(30) and (a)(34) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. New subsections (a)(9)–(a)(11), (a)(21) and (a)(29), subsection relettering and amendment of newly designated subsections (a)(18), (a)(23), (a)(24), (a)(26), (a)(30) and (a)(34) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18451. Applicability of These Regulations.

(a) Waste tire haulers, retreaders, waste tire generators, and end–use facilities shall comply with these regulations, unless exempted by Section 42954 of the Public Resources Code and applicable procedures set forth in Sections 18453–18453.2.

(b) The return of new tire adjustments to the wholesale distributor or manufacturer under "warranty consideration" is not considered used or waste tire hauling for the purposes, implementation, and enforcement of this Article. The person transporting the tires must have in the vehicle documentation substantiating that the tires are being returned for "warranty consideration." Lack of documentation or false information will subject the transporter to enforcement and penalties under this Article.

(c) "Tire Derived Product" being transported from the processing facility to the end–use facility is not considered used or waste tire hauling for the purposes, implementation, and enforcement of this Chapter. The hauler shall have a copy of the letter issued by the Board to the processing facility stating that the material is "Tire Derived Product" and a bill of lading accompanying the load. The letter and bill of lading shall be carried in the vehicle while transporting the "Tire Derived Product" from the processing facility to the end–use facility. Lack of documentation or false information will subject the transporter to enforcement and penalties under this Chapter.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42953 and 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. New subsections (b)–(b)(6) filed 9–10–96; operative 9–10–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 37).
7. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
8. Amendment of subsection (a) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (a) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
11. Amendment of subsection (a) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (a) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. Amendment of subsection (a) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (a) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.

16. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18452. Exemptions from Registration As a Waste Tire Hauler.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and subsections (a), (a)(3), (a)(4), and (b) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Repealer filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18453. Exemption Certification for Agricultural Purposes or Common Carrier Hauling Used or Waste Tires on a Return Trip.

(a) A person wishing to qualify for an exemption from waste tire hauler registration under Public Resources Code Section 42954(a)(5) and 42954(a)(6) shall certify in writing to the Board under penalty of perjury that they qualify for an exemption from registration as a waste tire hauler for agricultural purposes or under the common carrier exemption. This certification shall contain the following information:

(1) The name of the individual and/or business.

(2) The mailing address for the individual and/or business.

(3) The name of the contact person.

(4) The telephone number of the contact person.

(5) The number of vehicles used.

(6) The description of the business operation.

(7) A certification statement by the operator as follows: "The undersigned certifies under penalty of perjury under the laws of the State of California that the information provided herein is true and correct."

(8) The name and signature of the authorized agent on behalf of the business.

(9) The date of certification.

(b) Upon receipt of the certification letter, the Board will notify the applicant within 30 days if the certification for exemption is either:

(1) incomplete, and if so, what specific information is required.

(2) granted

(3) denied, and if so, the reason(s) for denial.

(c) If the agricultural purposes exemption or common carrier exemption is granted, the Board shall issue a non–transferable exemption document to be carried in the vehicle(s) used to transport the used or waste tires.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsection (a) filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Editorial correction restoring inadvertently omitted section (Register 2006, No. 47).

§ 18453.1. Cost to Receive an Exemption from Waste Tire Hauler Registration.

No fee is to be paid to the Board to certify an exemption from waste tire hauler registration.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Editorial correction restoring inadvertently omitted section (Register 2006, No. 46).

§ 18453.2. Valid Exemption Period and Renewal.

(a) An exemption as described under Public Resources Code Section 42954(a)(5) and 42954(a)(6) shall be valid from the date of approval to January 1 of the following year provided that the information in the certification letter relied upon to qualify for the exemption remains unchanged.

(b) A person wishing to continue to qualify for an exemption from waste tire hauler registration under Section 42954(a)(5) and (a)(6) of the Public Resources Code shall re–certify to the Board on an annual basis, and in accordance with the requirements in Section 18453.

(c) All exemption certifications must be submitted 45 days prior to the expiration date. Renewed exemptions are valid for one calendar year, January 1 to January 1 of the following year.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and newly designated subsection (a), and new subsections (b) and (c) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

6. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsections (a)–(b) filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Amendment of subsection (b) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (b) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (b) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18453.3. When Should an Exemption Be Renewed?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42954, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18454. Waste Tire Hauler Initial Registration.

(a) Any person hauling 10 or more used or waste tires shall apply for a waste tire hauler registration, unless exempt pursuant to Section 18451, by submitting to the Board a completed original form CIWMB 60 (3/06) "Waste Tire Hauler Registration Application," which is attached hereto as Appendix A (Form #60, 3/06) and incorporated by reference herein and form CIWMB 61 "Waste Tire Hauler Bond" (2/02), which is attached hereto as Appendix A (Form #61, 2/02) and incorporated by reference herein.

(1) For purposes of Public Resources Code Section 42960, it is presumed that any person transporting used or waste tires under a valid registration issued by the Board is an agent of the registered waste tire hauler.

(b) An application may be submitted at any time.

(c) The initial waste tire hauler registration is valid form the date of issuance to January 1 of the following year.

(d) The waste tire hauler is not authorized to haul used or waste tires after the January 1 expiration date unless the waste tire hauler has applied to renew the waste tire hauler registration prior to expiration and has received the Board issued renewal registration card(s) and vehicle decal(s).

(e) There is no fee paid to the Board to apply for an initial waste tire hauler registration.

(f) The registration care and/or decal issued to a specific vehicle shall not be used for any vehicle not listed by the registered hauler.

(g) A used and waste tire hauler registration is not transferable by the person to whom it was issued to any other person.

[The next page is 806.45.]

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42954, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading, repealer of section and new section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Change without regulatory effect amending subsection (a) filed 4–11–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 15).

§ 18454.1. Who Must Obtain an Initial Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42954, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18454.2. When Should I Obtain an Initial Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18454.3. How Long Is the Initial Waste Tire Hauler Registration Valid?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18454.4. How Do I Obtain an Initial Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42955 and 42956, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending section filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18454.5. Are There any Costs for the Initial Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42955 and 42956, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18455. Waste Tire Hauler Renewal Registration.

(a) Any person may apply for renewal of a waste tire hauler registration by submitting to the Board a new completed form CIWMB 60. If the waste tire hauler bond has expired or has been cancelled, a new bond must also be submitted with the renewal application.

(b) All renewed waste tire hauler registrations expire annually on January 1.

(c) All waste tire haulers who wish to continue to operate as waste tire haulers shall submit application for a renewed waste tire hauler registration to be received by the Board no later then 45 days prior to the January 1 expiration date.

(d) The waste tire hauler is not authorized to haul used or waste tires after the January 1 expiration date unless the waste tire hauler has applied to renew the waste tire hauler registration prior to expiration and has received Board issued renewal registration card(s) and vehicle decal(s).

(e) There is no fee paid to the Board to apply for a renewed waste tire hauler registration.

(f) The registration card and/or decal issued to a specific vehicle shall not be used for any vehicle not listed by the registered hauler.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading, repealer of section and new section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18455.1. How do I Renew the Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending subsection (a) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18455.2. When Should I Renew a Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18455.3. Are There any Costs for Renewal of the Waste Tire Hauler Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18456. Waste Tire Hauler Registration Application and Retreader Self–Certification Form.

(a) Copies of form CIWMB 60 and 61 and form CIWMB 173 can be obtained by contacting the California Integrated Waste Management Board, Special Waste Division, Hauler & Manifest Program, P.O. Box 4025, Sacramento, CA 95812, or accessing the California Integrated Waste Management Board website located at www.ciwmb.ca.gov/Tires/.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42954, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading, repealer of section, renumbering and amendment of former section 18456.1 to subsection (a), new subsection (b), renumbering and amendment of former section 18456.2 (a) through (a)(i) to subsection (c) through (c)9. and amendment of NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsection (a) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (a) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be

transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.

9. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).

10. Amendment of subsection (a) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.

11. Amendment of section heading and section filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).

13. Amendment of section heading and section refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.

14. Amendment of section heading and section refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.

15. Change without regulatory effect amending section filed 4–11–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 15).

16. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18456.1. Waste Tire Hauler Surety Bond Application Process.

(a) The initial application shall be accompanied by an original surety bond in the amount of $10,000 on behalf of the business owner in favor of the State of California ("surety bond"). The surety bond shall be completed by the insurance agent or bonding agent on form CIWMB 61 "Waste Tire Hauler Bond" (2/02), which is incorporated herein by reference. The surety bond shall be issued in the business name of the business owner as it appears on the application for registration as a waste tire hauler. The surety bond must be signed by a representative of the applicant.

(b) The surety bond shall remain in full force and effect during all registration periods. Failure to maintain an adequate bond pursuant to Public Resources Code 42955(d), shall result in automatic cancellation of the waste tire hauler registration. The cancelled registration may be reinstated by the Board when a new surety bond is posted.

(c) The surety company shall be licensed by the California Department of Insurance to transact the business of surety bonding in the State of California as an admitted insurance carrier.

(d) If coverage is not available as specified in (c) above, the waste tire hauler may seek coverage by a surety which, at a minimum, shall be eligible to provide surety bonds as an excess or surplus lines surety in California.

(e) If coverage is obtained as described in section (d), the surety shall be transacted by and through a surplus line broker currently licensed under the regulations of the California Department of Insurance and upon the terms and conditions prescribed in the California Insurance Code (CIC), Division 1, Part 2, Chapter 6.

(f) The Board or its designee may reasonably object to the use of any surety at anytime, whether before or after placement of coverage based on information obtained from, but not limited to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non–Admitted Insurers Quarterly List.

(g) The surety company shall become liable under the terms of the bond if the Board determines that the waste tire hauler has failed to comply with the provisions of Public Resources Code Section 42950 et. seq. or these regulations. The registered waste tire hauler is jointly and severally liable for the bond amount and any penalties, clean–up costs, or judgments resulting from hauling activities in violation of the Public Resources Code that exceed the bond amount.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer and new section heading, movement of former section text to section 18456(a), renumbering and amendment of former section 18456.2(b) and (c) to section 18456.1 (a) and (b), renumbering and amendment of former section 18456.4 (a) through (f) to section 18456.1 (c) through (h) and amendment of NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18456.2. Waste Tire Hauler Registration Process.

(a) The Board shall inform an applicant in writing within 30 days from the date of receipt that the application is any of the following:

(1) incomplete and what specific information is required to complete the application;

(2) complete and approved with registration documents and vehicle decals;

(3) denied and the reason(s) for denial pursuant to the Public Resources Code Section 42960.

(b) Upon approval of the initial or renewal application, the Board will provide proof of registration in the form of decals and registration cards to the waste tire hauler. The Board will issue a waste tire hauler registration card and decal for each vehicle identified in the application. The registration card shall be carried in the corresponding vehicle. The decal shall be permanently affixed to the lower right hand corner of the windshield.

(c) Registration cards and decals are not transferable from vehicle to vehicle. They shall be present in the vehicle to which they were issued.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42958, 42959, and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending subsections (a) and (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including repealer and new section heading, renumbering of former subsections (a) through (a)(i) to section 18456(c) through (c)(9), renumbering of former subsections (b) and (c) to section 18456.1(a) and (b), renumbering and amendment of former section 18456.6 to section 18456.2, new subsections (d) and (e) and amendment of NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
7. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18456.2.1. Retreader Self–Certification Process.

(a) The Board shall inform the applicant for retreader self–certification in writing within 30 days from the date of receipt of the Retreader Self–Certification form of the following:

(1) Whether the Self–Certification Form is complete;

(2) If the Board determines that the Self–Certification Form is incomplete, the Board shall inform the applicant what specific information is required to complete the Certification Form;

(b) Upon a Board determination that the Retreader Self–Certification is valid and complete, the Board will provide proof of Retreader Self–Certification in the form of decals and specifically designed Retreader registration cards to the Retreader for those vehicles either owned or leased by the retreader. The Board will issue a specifically designed Retreader registration card and decal for each vehicle identified by the Retreader. The Retreader registration card shall be carried in the corresponding vehicle. The decal shall be permanently affixed to the lower right hand corner of the windshield.

(c) Registration cards and decals are not transferable from vehicle to vehicle. They shall be present in the vehicle to which they were issued.

(d) If the Board determines at any time that the information in the Self–Certification Form is false, then the Board will deem the Self–Certification Form to be invalid, and will notify the applicant. In addition, the Board will determine whether an enforcement action is necessary.

(e) Upon invalidation of the Retreader self–certification, the Retreader shall immediately return all unused Retreader Trip Logs and Retreader registration card(s) for each vehicle registered under the Retreader's Registration to the Board.

(f) If the Retreader Self–Certification is invalidated, the Retreader shall not transport any tire casings unless in possession of a Comprehensive Trip Log (CIWMB 203) or tire trip log (CIWMB 648) and accompanying manifest (CIWMB 647) in accordance with Section 18459 requirements set forth for the waste tire hauler.

(g) If the Self–Certification is deemed invalid, any hauling of tire casings not in accordance with Subsection (f) will be a cause for denial, suspension, or revocation of the Waste Tire Hauler Registration.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42958, 42960 and 42961, Public Resources Code.

HISTORY

1. New section filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 17).
4. New section filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (f) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
7. Amendment of subsection (f) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (f) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18456.3. Changes in Information Provided or Lost Registration Documents.

(a) The waste tire hauler shall file a supplemental application to add or remove vehicle(s) on form CIWMB 60. The application shall be filed and approved by the Board before a vehicle is allowed to haul used or waste tires.

(b) The Board shall inform the applicant in writing within 30 days that the application for an added vehicle is any of the following:

(1) incomplete and what specific information is required to complete the application;

(2) complete with registration document(s) and vehicle decal(s).

(3) denied and the reason(s) for denial.

(c) In the event of a change in ownership of the waste tire hauler business:

(1) The owner shall notify the Board in writing 45 days prior to the change in ownership.

(2) The new owner shall apply for and obtain a waste tire hauler registration in accordance with Section 18454.

(3) The new owner may begin hauling used or waste tires when he/she has received the registration documents and vehicle decal(s) from the Board.

(4) The Board will process the change in ownership in accordance with Section 18456.2.

(5) Registrations are nontransferable.

(d) Every registered waste tire hauler shall notify the Board in writing of any change in mailing address or phone number. Notice shall be given no more than ten (10) days after the change. The waste tire hauler shall inform the Board of the prior mailing address or phone number, the new mailing address and phone number, and the effective date of the change by mailing a letter to the California Integrated Waste Management Board, Special Waste Division, Hauler & Manifest Program, P.O. Box 4025, Sacramento, CA 95812.

(e) The registered waste tire hauler shall submit a renewal application for any vehicle(s) for which decal(s) or registration(s) documents were lost. The Board will process the application as a renewal application under Section 18456.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer and new section heading, renumbering and amendment of former sections 18456.9, 18456.10, 18456.11, 18456.12 and 18456.13 to section 18456.3 and amendment of NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Change without regulatory effect amending subsection (d) filed 4–11–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 15).

§ 18456.4. Temporary Registration of Alternate Vehicles.

(a) Upon request, the Board may issue a single temporary registration certificate, specifically assigned to that registered waste tire hauler, once the Board has deemed a new waste tire hauler application complete or at the time of the yearly renewal. This certificate, for the use of a temporary vehicle, shall bear the hauler's company name, address, registration number, unique decal number, and the year the certificate is valid.

(b) The certificate shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in section 830.1 or 830.2 of the California Penal Code, or any local public officer designated by the Board.

(c) The registered waste tire hauler shall notify the Board in writing within two (2) calendar days of when the temporary registration certificate is used. Written notification shall contain the following information:

(1) Company name
(2) Inoperable vehicle license plate number, if applicable
(3) Inoperable vehicle assigned decal number, if applicable
(4) Period of time required for temporary registration
(5) Reason for temporary use
(6) Temporary vehicle license plate number
(7) Make/model of the temporary vehicle

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 5-28-2003; operative 7-1-2003 (Register 2003, No. 22). For prior history, see Register 96, No. 19.
2. Amendment of subsection (a) filed 7-21-2004; operative 7-21-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).

§ 18456.6. What will the Board do with the Initial Waste Tire Hauler Registration Application Once it is Submitted for Review?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-18-95 order including renumbering of former section 18456.6 to section 18456.2 transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).

§ 18456.7. What will the board do with the Waste Tire Hauler Registration Renewal Application Once it is Submitted for Review?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-18-95 order including repealer of section transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).

§ 18456.8. When the Waste Tire Hauler Registration Application is Approved, What Documents Will be Provided to Me?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-18-95 order including repealer of section transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).

§ 18456.9. If an Applicant Wishes to Obtain Registration for an Additional Vehicle, Does a New Application Need to be Submitted?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending first paragraph filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1-18-95 order including renumbering of former section 18456.9 to section 18456.3 (a) through (c) transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).

§ 18456.10. If a Registered Vehicle has been Sold or is no Longer Used for Waste Tire Hauling, Must I Inform the Board?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending section filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

6. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18456.10 to section 18456.3 (d) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18456.11. How Do I Notify the Board of a Change in Business Ownership?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending subsections (b) and (c) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18456.11 to section 18456.3 (e) through (e)(6) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18456.12. Do I Need to Notify the Board if I Change my Address?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956, 42958, 42959 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18456.12 to section 18456.3(f) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18456.13. What If I Lose the Decal(s) or Registration(s)?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42956 and 42958, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18456.13 to section 18456.3(g) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18457. Waste Tire Hauler Registration Denial, Suspension, and Revocation.

(a) The Board may refuse to issue or renew a waste tire hauler registration for failure to maintain a surety bond as required by Section 18455, and for the reasons stated in Public Resources Code Section 42960.

(b) The Board may suspend or revoke a waste tire hauler registration pursuant to Public Resources Code Section 42960.

(c) Upon suspension or revocation of the waste tire hauler registration, the waste tire hauler shall immediately return the decal(s) and registration card(s) to the Board.

(d) The waste tire hauler shall not transport used or waste tires, nor own, operate, or be an officer of a waste tire hauling business entity or corporation during the period of suspension or revocation. Any hauling of used and waste tires during the period of suspension or revocation will be a cause for denial, suspension, or revocation of the registration, and may subject the waste tire hauler to civil penalties pursuant to this chapter, and/or criminal penalties pursuant to the California Vehicle Code Section 31560.

(e) During the period of time for which a waste tire hauler's registration has been denied, suspended or revoked, neither the waste tire hauler, nor the waste tire hauler's vehicles, may be added to another waste tire hauler's registration. In addition, if the denial, suspension or revocation was the result of a particular driver'(s) actions, neither that driver, nor the driver's vehicles, may be added to another waste tire hauler's registration.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42960 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading, repealer of section, renumbering and amendment of former section 18457.1 to section 18457 and amendment of NOTE transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading, section and NOTE filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. New subsection (e) filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Editorial correction deleting erroneously added HISTORIES 8–10 (Register 2007, No. 5).

§ 18457.1. Waste Tire Hauler Registration Suspension.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42959, 42960 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section heading, renumbering of former section 18457.1 to section 18457, renumbering of former section 18458 to section 18458.1 with amendment of section heading and subsection (b) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Repealer filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18458. Request for Hearing of Denial, Suspension, or Revocation of Waste Tire Hauler Registration.

(a) If the Board refuses to issue or renew (denies) a registration, or suspends, or revokes a waste tire hauler registration pursuant to Public Resources Code Section 42960, the waste tire hauler may appeal that decision and request a hearing in accordance with Government Code Sections 11505 to 11519. The request for a hearing must be in writing and received by the CIWMB Legal Office at P.O. Box 4025, Sacramento, CA 95812, within 30 days after receipt of the denial, suspension, or revocation. The Board shall consider the original application, the reasons for denial, and any additional relevant information presented by the applicant. This decision shall be the final decision by the Board.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42960 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18458 to section 18457.1, renumbering of former section 18458.1 to section 18458 with amendment of section heading and subsection (a) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and subsection (a), repealer of subsections (b) and (c) and amendment of NOTE filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18458.1. What Steps Can I Take for Board Reconsideration of my Waste Tire Hauler Application?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42959, 42960 and 42961, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18458.1 to section 18458, transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18459. Waste Tire Manifest System Requirements.

(a) The Board will provide blank forms: CIWMB 203, CIWMB 647, CIWMB 648, and CIWMB 180 at the time of initial or renewed waste tire hauler registration. These forms will be provided at no cost. CIWMB 180 shall only be completed by a Retreader. It shall be unlawful for a waste tire hauler, who is not a Retreader determined by the Board, to use a Retreader Trip Log.

(1) The Manifest Form (CIWMB 647) and Tire Trip Log (CIWMB 648) may be used in lieu of the Comprehensive Trip Log; however, the Manifest Form and Tire Trip Log shall not be used after December 31, 2005.

(2) In lieu of (a)(1), if approved on an individual basis by the Board pursuant to Public Resources Code Section 42961.5, any person that is subject to the Comprehensive Trip Log, Retreader Trip Log, or Manifest and Tire Trip Log requirements of this section, may substitute their own functionally equivalent form, once approved by the Board, in lieu of the Board required form and submit an electronic report within ninety (90) days of the load shipment to the Board. The hauler shall provide a copy of their Board approved form to the generator or end–use facility for every waste or used tire transaction.

(3) Additional forms may be obtained from the Board by request.

(b) The Comprehensive Trip Log, Manifest Form, Tire Trip Log, and Retreader Trip Log shall be completed and signed under penalty of perjury by the appropriate representative, and accompany each shipment of used or waste tires from the point of origin to the facility.

(c) The following persons and entities shall comply with the Waste Tire Manifest System:

(1) waste and used tire hauler

(2) used or waste tire generator

(3) Federal, State, and local governments

(4) person hauling used or waste tires for agricultural purposes

(5) exempted commercial carrier

(6) a facility

(7) any person not included in Section 18459(c)(1) through (6) who gives, contracts, or arranges to have used or waste tires transported

(8) any person not included in Section 18459(c)(1) through (6) who accepts used or waste tires

(9) Retreader

(d) For purposes of this section, "waste and used tire hauler" means any person engaged in the transportation of used or waste tires, including haulers that the Board approved as exempt from registration pursuant to Public Resources Section 42954.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42954, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section heading filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section heading refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section heading refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.

4. New section heading refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Editorial Correction of HISTORY NOTES 1 through 4 (Register 96, No. 19.)
6. Certificate of Compliance as to 1–18–95 order including renumbering and amendment of former section 18459.1 to new section 18459(a) through (a)(3) and former section 18459.2 to new section 18459(b) through (b)(8) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
7. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
8. Amendment of subsections (a) and (b) and new subsection (c)(9) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (a) and (b) and new subsection (c)(9) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
11. Amendment of subsections (a) and (b) and new subsection (c)(9) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsection (a), new subsections (a)(1) and (a)(2), subsection renumbering and amendment of subsections (b) and (c)(2) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. Amendment of subsection (a), new subsections (a)(1) and (a)(2), subsection renumbering and amendment of subsections (b) and (c)(2) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsection (a), new subsections (a)(1) and (a)(2), subsection renumbering and amendment of subsections (b) and (c)(2) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (a)(2) and NOTE, transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18459.1. Tire Program Identification Number.

(a) On or after July 1, 2003, every waste tire generator shall apply for and obtain a CIWMB assigned Tire Program Identification Number for each location from which used or waste tires are generated and transported from. Each location shall be assigned a unique site specific Tire Program Identification Number.

(b) On or after July 1, 2003, every end–use facility shall apply for and obtain a CIWMB issued Tire Program Identification Number for each location where used or waste tires are accepted. Each location shall be assigned a unique site specific Tire Program Identification Number.

(c) Every waste tire hauler shall be assigned a CIWMB issued Tire Program Identification Number, if not already assigned, at the time of registration.

(d) Only one Tire Program Identification Number shall be assigned to any one business location. The Board shall issue a certificate with the Tire Program Identification Number for each location, which shall be posted by the operator in a conspicuous place.

(e) Every waste tire generator, waste tire hauler, or waste tire end–use facility shall submit written notification to the CIWMB upon any change of business operator or owner, business name, or business address within 10 days of the change.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18459.1 to new section 18459(a) through (a)(3), and renumbering and amendment of former section heading and section 18459.3 to section 19459.1 transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and repealer and new section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsection (d) filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Amendment of subsection (d) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (d) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
11. Amendment of subsection (d) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment of subsections (a) and (e) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. Amendment of subsections (a) and (e) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (a) and (e) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction restoring inadvertently omitted text to subsection (d) (Register 2006, No. 9).
17. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18459.1.2. Electronic Data Transfer and Web–Based Data Entry Requirements.

(a) Pursuant to Public Resources Code Section 42961.5, any person may submit electronic reports to the Board in lieu of the required Comprehensive Trip Log, Retreader Trip Log, or Manifest or Tire Trip Log forms requirements with the following provisions:

(1) The business entity shall complete and sign the application for the Electronic Data Transfer/Web Based Data Entry project.

(2) The business shall be in good standing with the CIWMB and have no final administrative, civil, or criminal actions taken by the CIWMB or its representatives for violations of Chapter 3, Article 5.5 or Chapter 6 of these regulations.

(3) The waste tire generator, waste tire hauler, Retreader, or end–use facility must demonstrate that they have sufficient technical competency to process and transmit the required information electronically.

(4) The Business entity may use their own functionally equivalent form, once approved by the Board, in lieu of the Board required form.

(b) The CIWMB may at any time terminate the businesses' eligibility to use electronic reporting based on violations of (a) or (c).

(c) Any falsification, misrepresentation, or omission of a fact to the CIWMB, or its representative in the application for the Electronic Data Transfer/Web Based Data Entry project or the electronic transmission of manifest information may be cause to terminate the business' eligibility

to participate in either the Electronic Data Transfer or Web–Based Data Entry programs.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (a)(4), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18459.2. Waste Tire Hauler Manifest Form Signature Requirements.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18459.2 to new section 18459(b) through (b)(8), and renumbering and amendment of former section heading and section 18459.4 to section 18459.2 transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Repealer filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18459.2.1. Submittal of the Comprehensive Trip Log, Manifest Form, Tire Trip Log, Retreader Trip Log, and Electronic Reporting to the Board.

As provided in this section, the Comprehensive Trip Log, or Manifest Form and Tire Trip Log, or Retreader Trip Log shall be submitted to the CIWMB by the waste tire generator, waste tire hauler or Retreader as specified in (a), (b), (c), or (d).

(a)(1) If the waste tire hauler chooses to use the Manifest form, the waste tire generator shall submit the completed original Manifest Form to the Board within ninety (90) days of the load shipment. The Manifest Form and Tire Trip Log shall be in the waste tire hauler's possession while transporting used or waste tires. The Manifest Form and the Tire Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the California Penal Code, or any local public officer designated by the Board.

(2) If the waste tire hauler chooses to use the Tire Trip Log, the waste tire hauler shall submit the completed original Tire Trip Log to the Board within ninety (90) days of the load shipment.

(3) The Manifest Form and Tire Trip Log shall not be used after December 31, 2005.

(b) On or before January 1, 2006, the waste tire hauler shall submit a copy of the completed Comprehensive Trip Log to the Board within ninety (90) days of the load shipment. The Comprehensive Trip Log shall be in the waste tire hauler's possession while transporting used or waste tires. The Comprehensive Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the California Penal Code, or any local public officer designated by the Board.

(c) If the waste or used tire is a tire casing being shipped for inspection, retreading, or recapping and is being transported by a Retreader, the waste tire generator may substitute an invoice for the required manifest form provided by the Retreader. The invoice shall contain the date of the transaction, the name of the customer and address, the Tire Program Identification Number of the generator or end use facility, the name of the retreader and address, the quantity of tire casings shipped. A copy of the invoice and Retreader Trip Log shall be in the Retreader's possession while transporting the tire casings. The copy of the invoice and Retreader Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the California Penal Code, or any local public officer designated by the Board.

(1) The Retreader shall submit the completed Retreader Trip Log to the Board within ninety (90) days of the load shipment.

(d) If approved by the Board pursuant to Public Resources Code Section 42961.5, any person that is subject to the requirements set forth in above (a), (b), or (c) may substitute their own functionally equivalent form, once approved by the Board, in lieu of the Board required form and submit an electronic report within ninety (90) days of the load shipment to the Board, in lieu of submitting the required form. The electronic report shall include all information required to be on the Comprehensive Trip Log, Retreader Trip Log, or Manifest and Tire Trip Log forms.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
2. Amendment of section heading, new subsections (b)–(b)(1) and subsection relettering filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, new subsections (b)–(b)(1) and subsection relettering refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
5. Amendment of section heading, new subsections (b)–(b)(1) and subsection relettering filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
8. Amendment of section heading and section refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section heading and section refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (d), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18459.3. Maintenance of Comprehensive Trip Logs, Retreader Trip Logs, Manifest Forms and Tire Trip Logs.

(a) The waste tire generator, and end–use facility shall retain a copy of the completed Manifest Form, receipt from the Comprehensive Trip Log, or Board approved EDT form at their place of business for a period

of three (3) years. These records shall be made available to any authorized representative of the Board upon request.

(1) If the waste or used tire is a tire casing being shipped to or from a generator, or end use facility for inspection, retreading, or recapping by a Retreader, an invoice as required pursuant to 18459.2.1(c) may be substituted for the Manifest form or receipt from the Comprehensive Trip Log. This invoice shall be retained at the place of business for a period of three (3) years and be made available to any authorized representative of the Board upon request.

(b) The waste tire hauler shall retain a copy of the completed Board approved EDT form, Comprehensive Trip Log, or the Manifest Form and Tire Trip Log at their place of business for a period of three (3) years. These records shall be made available to any authorized representative of the Board upon request.

(1) The Retreader shall retain a copy of the completed Retreader Trip Log and corresponding invoices at their place of business for a period of three (3) years. These records shall be made available to any authorized representative of the Board upon request.

(c) Any person using Electronic reporting, including used and waste tire generators and end–users, must retain a copy of the Board approved EDT form from the waste tire hauler or Retreader at their place of business for a period of three (3) years and be made available to any authorized representative of the Board upon request.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending first paragraph filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including renumbering of former section heading and section 18459.3 to section 18459.1, and renumbering and amendment of former section heading and section 18459.5 to section 18459.3 transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
7. Amendment of section heading and repealer and new section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
8. New subsections (a)(1) and (b)(1) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
9. New subsections (a)(1) and (b)(1) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
11. New subsections (a)(1) and (b)(1) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment of section heading and subsections (a)–(b) and new subsection (c) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. Amendment of section heading and subsections (a)–(b) and new subsection (c) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Amendment of section heading and subsections (a)–(b) and new subsection (c) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18459.4. Who Signs the Manifest?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18459.4 to section 18459.2 transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18459.5. Who Receives Copies of the Manifest and When?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18459.5 to section 18459.3 transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18459.6. Who Keeps Copies of the Manifest and for How Long?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.

5. Change without regulatory effect amending subparagraph (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18459.7. Where Do I Get Waste Tire Hauler Manifest Forms CIWMB–62?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18460. Waste Tire Hauler Manifest System Requirements.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42954, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Repealer filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).

§ 18460.1. Waste Tire Manifest System Requirements for Agricultural Uses Exemption.

(a) As provided in § 18459(a)(1), the agricultural exempt waste tire hauler shall not transport 10 or more used or waste tires without having a copy of the Comprehensive Trip Log or Manifest Form and Tire Trip Log in the vehicle while transporting the used or waste tires. The Comprehensive Trip Log or Manifest Form and Tire Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, or any local public officer designated by the Board.

(b) The agricultural exempt waste tire hauler shall leave one copy of the Manifest Form or receipt from the Comprehensive Trip Log with the waste tire generator, or end–use facility after the form has been completed with the required information.

(c) The agricultural exempt waste tire hauler shall submit the completed original Comprehensive Trip Log or Tire Trip Log to the Board *within ninety (90) days of the load shipment. The Comprehensive* Trip Log or Tire Trip Log shall contain the signature of the agricultural exempt waste tire hauler representative.

(d) The agricultural exempt waste tire hauler may destroy the "hauler" copy of the Comprehensive Trip Log or Manifest Form and Tire Trip Log upon reaching the end–use facility.

(e) The agricultural exempt waste tire hauler shall not haul used or waste tires to an end–use facility not legally authorized to accept used or waste tires.

(f) The agricultural exempt waste tire hauler shall contact the Board and provide the name of the company, name of the person, and phone number of a waste tire generator, or end–use facility who does not properly complete the manifest.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42954 and 42961.5, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and subsection (b) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and repealer and new section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsection (a) and amendment of NOTE filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Amendment of subsections (a)–(d) and (f) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (a)–(d) and (f) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a)–(d) and (f) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18460.1.1. Waste Tire Manifest System Requirements for Common Carrier Exemption.

(a) As provided in § 18459(a)(1), the common carrier approved for exemption pursuant to Public Resource Code Section 42954 shall not transport 10 or more used or waste tires without having a copy of the Comprehensive Trip Log or Manifest Form and Tire Trip Log in the vehicle while transporting the used or waste tires. The Comprehensive Trip Log or Manifest Form and Tire Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, or any local public officer designated by the Board.

(b) The exempt common carrier shall leave one copy of the Manifest Form or receipt from the Comprehensive Trip Log with the waste tire generator, or end–use facility after the form has been completed with the required information.

(c) The common carrier shall keep one copy of the completed Comprehensive Trip Log or Manifest Form and Tire Trip Log.

(d) The common carrier shall submit the completed original Comprehensive Trip Log or Tire Trip Log to the Board within ninety (90) days of the load shipment. The Comprehensive Trip Log or Tire Trip Log shall contain the signature of the common carrier representative.

(e) If the used or waste tires are transported from a collection center, a new Manifest Form or receipt from the Comprehensive Trip Log shall be used until the waste tires reach an end–use facility.

(f) The common carrier shall not haul used or waste tires to an end–use facility not legally authorized to accept used or waste tires.

(g) The common carrier shall contact the Board and provide the name of the company, name of the person, and phone number of a waste tire generator, or end–use facility who does not properly complete the manifest.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42954 and 42961.5, Public Resources Code.

HISTORY

1. New section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
2. Amendment of subsection (a) and amendment of NOTE filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
3. Amendment of subsections (a)–(e) and (g) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a)–(e) and (g) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a)–(e) and (g) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–9–2006 order transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18460.2. Waste Tire Manifest System Requirements for Waste Tire Haulers.

(a) The registered waste tire hauler shall show the waste tire generator the waste tire hauler registration for the vehicle being used to transport the used or waste tires.

(b) As provided in § 18459(a)(1), the registered waste tire hauler shall complete a new Manifest Form or receipt from a Comprehensive Trip Log for each pick–up or delivery of any used or waste tires in accordance with the directions on the form. If a Manifest Form is used, each pick–up or delivery of used or waste tires shall also be entered on the Tire Trip Log in accordance with the directions on the form. The waste tire hauler shall not transport any used or waste tires without having a copy of the Manifest Form and Tire Trip Log or Comprehensive Trip Log in the vehicle transporting the used or waste tires.

(1) As provided in § 18459(a)(2), the registered waste tire hauler may substitute their own functionally equivalent form, once approved by the Board, in lieu of the Board required form and substitute an electronic report for the Manifest Form and Tire Trip Log or Comprehensive Trip Log.

(c) A vehicle may contain used or waste tires from different waste tire generators. Used or waste tires from each generator shall be accompanied by their own Manifest Form or receipt from the Comprehensive Trip Log from point of origin.

(d) The waste tire hauler shall leave one copy of the Manifest Form or a completed receipt from the Comprehensive Trip Log with the waste tire generator, or end–use facility after the form or receipt has been completed.

(e) The waste tire hauler shall keep one copy of the completed Manifest Form or Comprehensive Trip Log.

(f) The waste tire hauler shall not haul used or waste tires to an end–use facility not legally authorized to accept used or waste tires.

(g) The waste tire hauler shall contact the Board and provide the name of the company, name of the person, and phone number of the waste tire generator, or end–use facility who does not provide the necessary information to the hauler in order to complete the manifest or Comprehensive Trip Log.

(h) The waste tire hauler shall not transport the used or waste tires without a properly completed Manifest Form and Tire Trip Log or Comprehensive Trip Log.

(i) Those waste and used tire haulers exempt from registration pursuant to Public Resources Code section 42954 shall be required to comply with the manifest requirements of Subsections (b) through (h) if they haul a load of 10 or more waste or used tires; however will not be allowed to participate in the electronic reporting as provided in (b)(1).

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42954, 42956 and 42961.5, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and subsections (b) and (c), new subsections (d) through (e)(5), subsection relettering, amendment of newly designated subsections (f) through (j), renumbering and amendment of former section 18460.3 to section 18460.2(k) through (*l*) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of section heading and subsection (b), new subsections (i)–(i)(1) and amendment of NOTE filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).
8. Amendment of subsections (a)–(i) and repealer of subsection (i)(1) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsections (a)–(i) and repealer of subsection (i)(1) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a)–(i) and repealer of subsection (i)(1) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (b)(1), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18460.2.1. Waste Tire Manifest System Requirements for Retreaders.

(a) A registered waste tire hauler meeting the requirements set forth in § 18450(a)(19) shall complete, sign under penalty of perjury, and submit the Retreader Self–Certification Form (CIWMB 173) to the Board before the Board deems that registered waste tire hauler to be a Retreader.

(b) The Retreader shall show the waste tire generator the Retreader registration card for the vehicle being used to transport the tire casings.

(c) The Retreader shall complete an invoice in accordance with §§ 18459.2.1(c) and 18461(a)(1) for each pick–up or delivery of tire casings. Notwithstanding § 18459(d), each pick–up or delivery of tire casings shall also be entered on the Retreader Trip Log in accordance with the directions on the form. The Retreader shall not transport any tire casings without having a copy of the invoice and Retreader Trip Log in the vehicle transporting the tire casings.

(d) A vehicle may contain tire casings from different waste tire generators. Tire casings from each generator shall be accompanied by their own invoice form from point of origin.

(e) The Retreader shall leave one copy of the invoice form with the waste tire generator, or end–use facility after the invoice form has been completed.

(f) The Retreader shall keep one copy of the completed invoice form.

(g) The Retreader shall not haul tire casings to an end–use facility not legally authorized to accept used or waste tires.

(h) The Retreader shall not transport the tire casings without a properly completed invoice form and Retreader Trip Log.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2005, No. 17).
4. New section filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (b)–(e) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
7. Amendment of subsections (b)–(e) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (b)–(e) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of subsection (c) (Register 2006, No. 28).
10. Certificate of Compliance as to 2–9–2006 order, including further amendment of subsection (f), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18460.3. What if the Tire Dealer/Waste Tire Generator Does Not Properly Complete the Manifest Form?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18460.3 to section 18460.2(k) through (*l*) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18460.4. What are Legally Authorized Waste Tire Sites?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including repealer of section transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18461. Manifest System Requirements for Waste Tire End–Use Facilities.

The Waste Tire Manifest System requires specific actions on the part of end–use facilities including, but not limited to, the following.

(a) As provided in § 18459.3(a), an end–use facility shall retain a copy of the Manifest Form, Board approved EDT form, or the completed receipt from the Comprehensive Trip Log provided by the registered hauler.

(1) If a tire casing is being shipped to an end use facility for inspection, retreading, or recapping by a Retreader, an invoice as required pursuant to 18459.2.1(c) may be substituted for the Manifest form.

(b) The waste tire end–use facility may accept the used or waste tires from waste tire hauler(s) who are not registered with the Board and/or have no manifest as provided below:

(1) If waste or used tires are received from a registered hauler that does not have a Comprehensive Trip Log, the end use facility shall complete the Unregistered Hauler & Comprehensive Trip Log Substitution Form (CIWMB 204) within 48 hours of the tire delivery and submit the form to the CIWMB within 90 days.

(2) The end–use facility shall complete the Unregistered Hauler & Comprehensive Trip Log Substitution Form (CIWMB 204) and submit it to the Board within 30 days of the acceptance of 10 or more waste or used tires from a person who is not registered as a waste tire hauler unless that person has written authorization by the Local Enforcement Agency for purposes of an Amnesty Day Event or a One Time Exemption and is transporting no more than 20 waste or used tires to the end–use facility.

(3) If the person is hauling 20 or more waste or used tires under the written authorization of a Local Enforcement Agency for purposes of an Amnesty Day Event or a One Time Exemption, the end–use facility shall report this information on the Unregistered Hauler & Comprehensive Trip Log Substitution Form (CIWMB 204) and submit the form to the Board within 30 days of the acceptance of waste or used tires from that person.

(c) End–use facility operators shall make available for review by the waste tire hauler any Board issued permit, exemption from waste tire facility permitting requirements, or any local permit or license allowing the storage of used or waste tires on the site.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951 and 42961.5, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and section, renumbering and amendment of former section 18461.1 to section 18461(a) through (c) and former section 18461.2 to section 18461(d) through (g) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. Amendment of subsection (c) and amendment of NOTE filed 7–21–2004; operative 7–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 30).

8. New subsection (a)(1) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
9. New subsection (a)(1) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
11. New subsection (a)(1) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
14. Amendment refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Amendment refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (b), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18461.1. My Site Accepts Waste Tires. What Shall I do as the Operator of a Destination Facility if a Waste Tire Hauler Who is Not Registered With the Board and/or Has No Manifest Delivers Waste Tires to My Site?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18461.1 to section 18461(a) through (c) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18461.2. How Can I Demonstrate That My Facility is Authorized to Accept Waste Tires?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18461.2 to section 18461(d) through (g) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18462. Manifest System Requirements for Waste Tire Generators.

(a) A waste tire generator shall not give, contract, or arrange with another person to transport used or waste tires unless that person is a registered waste tire hauler or is exempt under Public Resources Code Section 42954.

(1) If a tire casing is being shipped from a generator for inspection, retreading, or recapping by a Retreader, an invoice as required pursuant to 18459.2.1(c) may be substituted for the Manifest form. This invoice shall be retained at the place of business for a period of three (3) years and be made available to any authorized representative of the Board upon request.

(b) As provided in § 18459.3(a), a waste tire generator shall retain a Board approved EDT form, completed receipt from the Comprehensive Trip Log provided by the hauler, or, retain a copy, and forward the original Manifest Form to the Board.

(c) If waste or used tires are removed from the generator's location by a registered waste tire hauler and a completed receipt from the Comprehensive Trip Log is not provided, the generator shall complete a Unregistered Hauler & Comprehensive Trip Log Substitution Form (CIWMB 204) within 48 hours of the tire removal and submit the form to the CIWMB within 90 days.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42954, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including amendment of section heading and section, renumbering and amendment of former section 18462.1 to section 18462(a) through (b) and former section 18462.2 to 18462(c) through (d) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).
6. Amendment of section heading and section filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
7. New subsection (b)(1) filed 8–23–2004 as an emergency; operative 8–23–2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–21–2004 or emergency language will be repealed by operation of law on the following day.
8. New subsection (b)(1) refiled 12–22–2004 as an emergency; operative 12–22–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–21–2005 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 12–22–2004 emergency amendment by operation of Government Code section 11346.1(f) (Register 2005, No. 17).
10. New subsection (b)(1) filed 4–25–2005 as an emergency; operative 4–25–2005 (Register 2005, No. 17). A Certificate of Compliance must be transmitted to OAL by 8–23–2005 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section heading and section filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 4–25–2005 order transmitted to OAL 8–11–2005 and filed 9–22–2005 (Register 2005, No. 38).
13. Amendment of section heading and section refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
14. Amendment of section heading and section refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 2–9–2006 order, including amendment of NOTE, transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18462.1. Can I Give Tires to a Person Wanting to Haul my Waste Tires but Who Doesn't Have a Registration or is Not Exempt From the Registration?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18462.1 to section 18462(a) through (b) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18462.2. Do I need to Know the Destination Site or Collection Facility for the Waste Tires?

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42950, 42951, 42952, 42953, 42961.5 and 42962, Public Resources Code.

HISTORY

1. New section filed 1–18–95 as an emergency; operative 1–18–95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–18–95 as an emergency; operative 5–18–95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–15–95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–21–95 as an emergency; operative 8–21–95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11–28–95 as an emergency; operative 11–28–95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–27–96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
6. Certificate of Compliance as to 1–18–95 order including renumbering of former section 18462.2 to section 18462(c) through (d) transmitted to OAL 3–29–96 and filed 5–9–96 (Register 96, No. 19).

§ 18463. Civil Penalties.

Any waste tire generator, end–use facility, or waste tire hauler or any party or person who commits any of the following acts shall be liable for a civil penalty:

(a) Intentionally, or negligently violates any permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the Public Resources Code relating to the generation, transportation or disposal of used or waste tires.

(b) The aiding or abetting, or allowing of any violation, or noncompliance with any permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the Public Resource Code relating to the generation, transportation or disposals of used or waste tires.

(c) Any violation of, or noncompliance with any order issued by the Board or by a hearing officer or a court relating to the generation, transportation or disposal of used or waste tires.

(d) Any false statement, misrepresentation, or omission of a significant fact or other required information in the application for a waste tire hauler registration, Comprehensive Trip Log, Retreader Trip Log, Manifest Form or Tire Trip Log, or in information regarding these matters subsequently reported to the Board.

(e) In addition to liability for a civil penalty, the Board may:

(1) File a claim against any registered waste tire hauler surety bond for activities resulting from the illegal disposal of tires or injury.

(2) Deny, suspend, or revoke a waste tire hauler registration.

NOTE: Authority cited: Sections 40502 and 42962, Public Resources Code. Reference: Section 42962, Public Resources Code.

HISTORY

1. New section filed 5–9–96; operative 5–9–96 (Register 96, No. 19).
2. Amendment filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
3. Amendment of subsection (d) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (d) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (d) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–9–2006 order, including amendment of subsection (d), transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18464. Amount of Civil Penalties and Administrative Penalty Schedule.

(a) Civil penalties may be imposed administratively in accordance with the following penalty tables:

1. For waste and used tire haulers, tire generators, and end–use facilities, using Penalty Table I;

A. Determine what violations have occurred.

B. Determine the number of violations or offenses that have occurred.

C. Add up the penalties to determine the applicable fine.

Penalty Table I: For Tire Haulers, Tire Generators, and End-Use Facilities

Violation	*Description of Violation*	*1st Offense*	*2nd Offense*	*3rd and Subsequent Offenses*
PRC 42951(b)	Failure of tire haulers to transport waste or used tires to a facility that is permitted, excluded, exempted, or otherwise authorized by the board, by statute or regulation, to accept waste or used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal. (major, minor).	$1,000–$3,000	$2,000–$4,000	$3,000–$5,000
PRC 42952(b)	Falsely advertising or representing himself or herself as being in the business of a waste and used tire hauler without being registered as a waste or used tire hauler by the board.	$1,000–$2,000	$2,000–$4,000	$4,000–$5,000
PRC 42953	Any person who gives, contracts, or arranges with another person to transport waste or used tires and fails to utilize a tire hauler holding a valid waste and used tire hauler registration from the board (unless the tire hauler is exempted from registration requirements as specified in Public Resource Code Section 42954).	$500–$1,000	$1,000–$2,000	$2,000–$3,000
PRC 42956	Failure to carry waste or used tire hauler registration in vehicle; failure to permanently affix tire hauler decal to the lower right hand corner of the windshield.	$100–$500	$1,000–$3,000	$3,000–$5,000
PRC 42956(c)	Failure to present waste or used tire hauler registration upon the demand of an authorized representative of the board.	$100–$500	$500–$1,000	$1,000–$1,750
PRC 42961.5	Comprehensive Trip Log, Manifest Violations, or Electronic reporting; including failure to submit the Comprehensive Trip Log, manifests, or Electronic reporting on a quarterly basis, missing information, incomplete information, and false information.	$100–$500	$500–$1,000	$1,500–$2,500
14 CCR 18456.1(b)	Failure to maintain surety bond in full force and effect during all registration periods.	$500–$1,000	$1,000–$2,000	$2,000–$3,000
14 CCR 18456.3	Failure to notify board of changes in information provided on registration application form (CIWMB 60) as required by 14 CCR 18456.3.	$100–$300	$500–$1,000	$1,500–$2,000

2. For unregistered waste and used tire haulers, using Penalty Table II;

A. Determine the number of violations or offenses.

B. Find the number of tires hauled for each load.

C. Determine whether any other violations listed in Table I have occurred and add that fine to the fine from Table II to determine the total fine.

Penalty Table II: Violation of PRC section 42951(a)

Violation	*10–20 Tires per Load*	*21–40 Tires per Load*	*41–100 Tires per Load*	*More than 100 Tires per Load*
Unregistered Hauler *(1st Offense)*	$100–$500	$500–$750	$500–$1,000	$1,000–$2,000
Unregistered Hauler *(2nd Offense)*	$500–$1,000	$750–$1,250	$1,000–$1,750	$2,000–$4,000
Unregistered Hauler *(3rd Offense. etc)*	$1,000–$1,750	$1,250–$2,000	$1,750–$2,750	$3,000–$5,000

(b) For administrative hearings held pursuant to Public Resources Code sections 42960 and 42962, a person waives the right to a hearing when that person fails to submit to the Board a Notice of Defense pursuant to Government Code section 11506 or CIWMB Request for Hearing form within 15 days of service of the administrative complaint on that person.

NOTE: Authority cited: Sections 40502 and 42962, Public Resources Code. Reference: Sections 42960 and 42962, Public Resources Code; and Section 11506, Government Code.

HISTORY

1. New section filed 5–9–96; operative 5–9–96 (Register 96, No. 19).
2. Amendment of section heading and new subsection (b) (including Penalty Tables I–II) filed 3–6–2003 as an emergency; operative 3–6–2003 (Register

2003, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–7–2003 or emergency language will be repealed by operation of law on the following day.

3. Repealer of subsection (a) and relettering of former subsection (b) to subsection (a) filed 5–28–2003; operative 7–1–2003 (Register 2003, No. 22).
4. Refiling of 3–6–2003 order, including further amendment of subsections (a)1. and (a)2. and amendment of Penalty Table I, 7–7–2003 as an emergency; operative 7–7–2003 (Register 2003, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
5. Refiling of 7–7–2003 order 11–3–2003 as an emergency; operative 11–3–2003 (Register 2003, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2004 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of subsection (a)1. (Register 2004, No. 10).
7. Refiling of 11–3–2003 order 3–2–2004 as an emergency, including further amendment of subsection (a)(1); operative 3–2–2004 (Register 2004, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–30–2004 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3–2–2004 order transmitted to OAL 6–15–2004 and filed 7–21–2004 (Register 2004, No. 30).
9. Amendment filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
10. Amendment refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 2–9–2006 order, including new subsection (b) and amendment of NOTE, transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

§ 18465. Criteria to Impose a Civil Penalty.

In assessing the amount of civil penalty, factors to be considered shall include, but are not limited to, the following:

(1) The nature, circumstances, extent, and gravity of the violation.

(2) Evidence that the violation was willful or negligent.

(3) The good or bad faith exhibited by the party.

(4) History of violation of the same or similar nature.

(5) The extent to which the party has cooperated with the Board in remediating the violation.

(6) The extent that the party has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(7) Evidence of any financial gain resulting from the violation.

(8) Such other matters as justice may require.

NOTE: Authority cited: Sections 40502, 42962 and 43020, Public Resources Code. Reference: Section 42962, Public Resources Code.

HISTORY

1. New section filed 5–9–96; operative 5–9–96 (Register 96, No. 19).
2. Repealer of subsection (b) filed 3–6–2003 as an emergency; operative 3–6–2003 (Register 2003, No. 10). A Certificate of Compliance must be transmitted to OAL by 7–7–2003 or emergency language will be repealed by operation of law on the following day.
3. Repealer of subsection (b) refiled 7–7–2003 as an emergency; operative 7–7–2003 (Register 2003, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsection (b) refiled 11–3–2003 as an emergency; operative 11–3–2003 (Register 2003, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2004 or emergency language will be repealed by operation of law on the following day.
5. Refiling of 11–3–2003 order 3–2–2004 as an emergency, including further amendment of NOTE; operative 3–2–2004 (Register 2004, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–30–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–2–2004 order, including repealer of subsection (a) designator, transmitted to OAL 6–15–2004 and filed 7–21–2004 (Register 2004, No. 30).

§ 18466. Procedure for Imposing Civil Penalties.

(a) Civil penalties may be administratively imposed pursuant to the Administrative Procedure Act Government Code Section 11500 et seq.

(b) Civil penalties may be imposed pursuant to the Public Resources Code Section 42962 in the discretion of the trier of fact in the civil proceeding.

NOTE: Authority cited: Sections 40502 and 42962, Public Resources Code. Reference: Sections 11500 and 42962, Public Resources Code.

HISTORY

1. New section filed 5–9–96; operative 5–9–96 (Register 96, No. 19).
2. Amendment of subsection (a) filed 6–13–2005 as an emergency; operative 6–13–2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–11–2005 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled 10–12–2005 as an emergency; operative 10–12–2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2006 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (a) refiled 2–9–2006 as an emergency; operative 2–9–2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–9–2006 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 2–9–2006 order, including amendment of NOTE, transmitted to OAL 6–6–2006 and filed 7–19–2006 (Register 2006, No. 29).

[The next page is 806.53.]

Article 9. Financial Assurance Requirements for Closure of a Major Waste Tire Facility

§ 18470. Scope and Applicability.

(a) This Article requires operators of major waste tire facilities to demonstrate adequate financial ability to conduct closure activities.

(b) Operators of all major waste tire facilities, except state and federal operators, shall comply with the requirements of this Article upon application for issuance of a major waste tire facilities permit pursuant to Chapter 6, Article 1, section 18420.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsection (a) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18471. Definitions.

(a) When used in this Article, the following terms shall have the meanings given below:

(1) "Current Closure Cost Estimate" means the most recent estimate prepared in accordance with Chapter 6, Article 6, section 18442.

(2) "Depository Trust Fund" means the fund established in conjunction with a surety bond or letter of credit and that meets the requirements of section 18474 of this Article.

(3) "Enterprise Fund" means a fund established to account for the financing of self–supporting activities of a government unit that renders services on a user–fee basis.

(4) "Government Securities" means financial obligations issued by a federal, state or local government, including general obligation bonds, revenue bonds, and certificates of participation.

(5) "Letter of Credit" means a contract by which the issuing institution promises to extend credit on behalf of an operator to the Board or its designee, on presentation of the mechanism in accordance with its terms.

(6) "Provider of financial assurance" means an entity, other than an operator, that provides financial assurance to an operator of a major waste tire facility, including but not limited to a trustee, an institution issuing a letter of credit, or a surety company.

(7) "Surety Bond" means a contract by which a surety company promises that, if the operator fails to perform required closure activities, the surety company will be liable for the operator's responsibilities as specified by the bond.

(8) "Trust fund" means a contract by which the operator transfers assets to a trustee to hold, on behalf of the Board or its designee, to pay closure costs.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsections (a)(1)–(2) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18472. Closure Cost Estimate Adjustments.

(a) An operator shall increase the closure cost estimate when changes to the closure plan increase the cost of closure.

(b) An operator may reduce the closure cost estimate when changes to the closure plan decrease the cost of closure. The request for reduction shall be submitted with an application for renewal or revision of the permit for approval by the Board or its designee.

(c) Each year, an operator shall submit to the Board or its designee, a report calculating the increase in the closure cost estimate due to the inflation factor for the previous calendar year.

The inflation factor is derived from the annual Implicit Price Deflator for Gross National Product as published annually by the U.S. Department of Commerce, in its Survey of Current Business. The inflation factor is the result of dividing the latest annual published deflator by the deflator for the previous year. The operator shall adjust the closure cost estimate for inflation within 60 days of the anniversary date of the establishment of the financial mechanism for closure costs. The operator shall increase the monetary amount of the financial mechanism based on this inflation factor.

(d) The mechanism(s) used to demonstrate financial responsibility shall be updated, no more than 60 days after a change in the amount of the current closure cost estimate covered by the mechanism(s).

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6–22–93 emergency order including amendment of section heading and text transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18473. Acceptable Mechanisms and Combination of Mechanisms.

(a) Subject to the limitation of subsection (c) of this section, an operator shall use any one or any combination of the mechanisms specified which are defined in the following sections of this Article:

(1) Section 18474, Trust Fund

(2) Section 18475, Surety Bond

(3) Section 18476, Letter of Credit

(4) Section 18477, Government Securities

(5) Section 18478, Enterprise Fund

(6) Section 18478.5. State Approved Mechanism

(b) If a combination of mechanisms are used, the operator shall designate one mechanism as "primary" and all others as "excess" coverage.

(c) If an operator uses a trust fund in combination with a surety bond or letter of credit, the trust fund may be used as the depository trust fund for the other mechanisms.

(d) An operator shall not combine a performance bond with any other mechanism(s).

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (a) and new subsection (a)(6) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18474. Trust Fund.

(a) An operator may establish a trust fund to meet the requirements of this Article. The trust agreement shall be submitted to the Board or its designee as an originally signed duplicate. The trustee shall be an entity which has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal or state agency.

(b) The trust agreement shall be worded as specified by using form CIWMB 140 "Trust Agreement" (12/91) which is incorporated herein by reference; and also shall contain original signature of the grantor and the trustee. (See Appendix A.)

(c) The initial deposit to the trust fund shall be at least equal to the current closure cost estimate.

(d) If the value of the fund is at any time less than the amount of the current estimate, the operator shall either deposit an amount into the fund so that the value of the fund at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Article, to cover the difference.

(e) If at any time, the value of the trust fund plus the amount of coverage demonstrated by other mechanisms is greater than the closure cost estimate based on the maximum quantity of waste tires permitted for storage, the operator may request in writing that the Board or its designee authorize the release of the excess funds. After receiving such a request, the Board or its designee shall review the request and, if any excess funds are verified, shall instruct the trustee to release the funds.

(f) After the Board or its designee has approved final closure, an operator or any other person authorized by the Board to perform closure, may request reimbursement for closure expenditures by submitting to the Board for review, documentation of those expenditures, including but not limited to tire receipts. After receiving the documentation for closure activities, the Board or its designee shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified. After the Board or its designee has approved final closure, the Board or its designee shall instruct the trustee, in writing, to reimburse the fund to the grantor.

(g) The Board or its designee shall agree to termination of the trust when:

(1) An operator substitutes alternate financial assurance as specified in section 18479 of this Article; or

(2) The Board or its designee releases the operator from the requirements of this Article in accordance with section 18482.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsection (b) and amendment of subsections (e) and (f) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
10. Amendment of subsections (b)–(e) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18475. Surety Bond.

(a) An operator may establish a surety bond to meet the requirements of this Article. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in the most recent issuance of Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond shall be worded as specified by using one of the following forms which are incorporated by reference;

(1) Form CIWMB 141 (1/92) "Performance Bond," which is incorporated herein by reference, for a surety bond guaranteeing performance (See Appendix A.); or

(2) Form CIWMB 142 (1/92) "Financial Guarantee Bond", which is incorporated herein by reference, for a surety bond guaranteeing payment. (See Appendix A.)

(c) An operator who uses a surety bond to satisfy the requirements of this Article, or the surety who issues the bond, shall also establish a depository trust fund which meets the requirements of section 18474 of this Article if:

(1) An operator fails to demonstrate alternate financial assurance within 60 days after receiving notice of cancellation of the mechanism;

(2) An operator fails to perform closure in accordance with the applicable approved closure plan and permit requirements when required to do so by the Board or its designee; or

(3) A surety fails to perform such activities on behalf of the operator. This applies to the performance bond only.

(d) Under the terms of the bond, all payments made from the bond shall be deposited by the surety directly into the depository trust fund.

(e) A surety company shall become liable under the terms of the bond, if the Board or its designee determines that the operator has failed to perform closure as guaranteed by the bond.

(f) Under the terms of the bond, a surety may cancel the bond by sending notice of cancellation by certified mail to the operator and the Board or its designee. Cancellation shall not take effect until 120 days after the date of receipt of the notice of cancellation by both the operator and the Board or its designee, as evidenced by the return receipts.

(g) An operator may cancel a bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization from the Board or its designee to terminate the bond.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (f) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsections (b)(1)–(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18476. Letter of Credit.

(a) An operator may establish a letter of credit to meet the requirements of this section. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit shall be worded as specified by using form CIWMB 143 "Irrevocable Letter of Credit for Closure Costs" (12/91) which is incorporated herein by reference. (See Appendix A.)

(c) The letter of credit shall be accompanied by a letter from the operator identifying the number, issuing institution, and date of issuance of the letter of credit; and the name, address, facility number, and amount of funds assured by the letter of credit for closure for each major waste tire facility.

(d) An operator who uses a letter of credit to satisfy the requirements of this Article or the issuing institution shall also establish a depository trust fund which meets the requirements of section 18474 of this Article if:

(1) An operator fails to demonstrate alternate financial assurance within 60 days after receiving notice of cancellation of the mechanism; or

(2) An operator fails to perform closure in accordance with the applicable approved closure plan and permit requirements when required to do so by the Board or its designee.

(e) Under the terms of the letter of credit, all payments made from the letter of credit shall be deposited by the financial institution issuing the letter of credit, directly into the depository trust fund.

(f) The letter of credit shall:

(1) Be irrevocable and issued for a period of at least one year; and

(2) Provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the operator and the Board or its designee by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the operator and the Board or its designee have received the notice, as evidenced by the return receipts.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsection (c), adoption of subsection (d), and relettering of former subsection (d) to (e), and relettering of former subsection (e) to (f) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18477. Government Securities.

(a) Government securities may be used to cover closure costs only for major waste tire facilities operated by government agencies.

(b) The terms of issuance of government securities shall specify that proceeds from the sale of the securities shall be deposited into a financial assurance mechanism that meets the requirements of Section 18478(d) of this Article.

(c) The securities shall have been issued and the proceeds deposited into the financial assurance mechanism that provides equivalent protection to a trust fund by meeting the following requirements:

(1) Proceeds from the sale of securities shall be used exclusively to pay for closure activities;

(2) The financial operations of the provider of the financial assurance are regulated by a federal or state agency, or the provider is otherwise certain to maintain and disburse the assured funds properly;

(3) If the provider of financial assurance has authority to invest revenue deposited into the mechanism, the provider shall exercise investment discretion similar to a trustee; and

(4) The mechanism meets other requirements that the Board determines are necessary to ensure that the assured funds shall be available in a timely manner.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including repealer and adoption of subsections (a)–(c) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18478. Enterprise Fund.

(a) The enterprise fund may be used to cover closure costs only for major waste tire facilities operated by government agencies.

(b) The enterprise fund shall dedicate its revenue exclusively or with exclusive first priority to financing closure activities.

(c) The enterprise fund shall be established and the documents shall be worded as specified by using form CIWMB 144 "Enterprise Fund for Financial Assurances" (3/92), which is incorporated herein by reference. (See Appendix A.) The wording, however, may be modified to accommodate special circumstances on a case–by–case basis, as approved by the Board or its designee.

(d) Revenue generated by an enterprise fund shall be deposited into a financial assurance mechanism which:

(1) Provides equivalent protection to a trust fund as described in section 18474 of this Article;

(2) Shall be funded within five years as described in Section 18474 of this Article;

(3) Is used exclusively to finance closure activities and shall remain inviolate against all other claims, including any claims by the operator, the operator's governing body, and the creditors of the operator and its governing body;

(4) Authorizes the Board or its designee to direct the provider of financial assurance to pay closure costs if the Board or its designee determines that the operator has failed to perform closure activities covered by the mechanism;

(5) Is maintained by a provider whose financial operations are regulated by a federal or state agency, or the provider is otherwise certain to maintain and disburse the assured funds properly;

(6) Is maintained by a provider who has authority to invest revenue deposited into the mechanism.

(7) Meets other requirements that the Board determines are necessary to ensure that the assured amount of funds shall be available for closure activities in a timely manner.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendments transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (c) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18478.5. State Approved Mechanism.

(a) An operator may satisfy the requirements of this Chapter by obtaining any other mechanism that meets the following criteria, and that is approved by the Board.

(1) The financial assurance mechanism(s) must ensure that the amount of funds assured is sufficient to cover the costs assured when needed;

(2) The financial assurance mechanism(s) must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanism(s) must be obtained by the operator before the first waste is received at a new facility and before any other financial mechanism is cancelled at existing facilities. The financial mechanism must be maintained until the operator is released from the financial assurance requirements under this Chapter.

(4) The financial assurance mechanism(s) must be legally valid, binding, and enforceable under California and Federal law.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Sections 40502 and 42821, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18479. Substitution of Mechanisms by Operator.

(a) An operator may substitute any alternate financial assurance mechanism(s) acceptable to the Board or its designee as specified in this Article, provided that at all times the operator maintains an effective mechanism or combination of mechanisms that satisfies the requirements of section 18473 of this Article, and informs the Board of such substitution.

(b) After obtaining alternate financial assurance, an operator may request that the Board or its designee terminate or authorize the termination of a financial assurance mechanism. The operator shall submit such a request in writing with evidence of alternate financial assurance.

(c) Following written approval by the Board or its designee, the operator may cancel a financial assurance mechanism by giving notice to the provider of financial assurance.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18480. Bankruptcy or Other Incapacity of an Operator or Provider of Financial Assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, Title 11, U.S.C. sections 101–1330 in which:

(1) The operator is named as debtor. The operator shall notify the Board or its designee by certified mail of such commencement.

(2) A provider of financial assurance is named as debtor, such provider shall notify the operator and the Board or its designee by certified mail of such commencement.

(b) An operator shall be deemed to be without the financial assurances in the event of bankruptcy of its provider, or in the event of a suspension or revocation of the authority of the provider to issue such coverage. If such an event occurs, the operator shall demonstrate, to the Board or its designee, alternate coverage as specified in this Article within 60 days after receiving notice of the event. If the operator fails to obtain alternate coverage within 60 days, the operator shall notify the Board or its designee within 10 days of such failure.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of section heading and subsection (a)(1) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18481. Recordkeeping and Reporting Requirements.

(a) An operator shall maintain evidence of all financial assurance mechanisms until the operator is released from the requirements of this Article, as specified in section 18482. This evidence shall be maintained at each major waste tire facility, whenever possible, or at an alternate, designated location approved by the Board or its designee and which is accessible to the operator, and available for the Board or its designee to review.

(b) An operator shall maintain the following types of evidence of financial assurance:

(1) Trust Fund. An operator using a trust fund shall maintain a copy of the trust agreement and statements verifying the current balance of the fund.

(2) Surety Bond. An operator using a surety bond shall maintain a copy of the bond and any amendments to the bond.

(3) Letter of Credit. An operator using a letter of credit shall maintain a copy of the letter of credit and any amendments to the letter of credit.

(4) Government Securities. An operator using government securities shall maintain a copy of the following:

(A) All official resolutions, forms, letters or other pertinent documents generated to issue the securities;

(B) The terms of issuance of the securities; and

(C) With respect to the financial assurance mechanism into which proceeds from the issuance are deposited, the information listed in subsection (5)(C)1., 2., and 3. of this section.

(5) Enterprise Fund. An operator using a enterprise fund shall maintain a copy of the following:

(A) All official resolutions, forms, letters, or other pertinent documents generated to establish the fund;

(B) The annual financial statements of the fund; and

(C) With respect to the financial assurance mechanism into which enterprise fund revenue is deposited:

1. The mechanism, which shall identify the major waste tire facility(ies) and the current closure cost estimates covered by the mechanism;

2. A letter from an authorized officer of the institution maintaining the mechanism, identifying the amount of coverage provided by the mechanism as of the date of its establishment and each anniversary date of establishment; and

3. Documentation that the mechanism meets the requirements of section 18478(d) of this Article.

(c) An operator shall submit current evidence of financial responsibility, as described in subsection (b) of this section, to the Board or its designee:

(1) Whenever a financial assurance mechanism is established or amended.

(A) In the case of a trust fund, letter of credit or surety bond, such documentation shall include the original mechanisms or amendments;

(B) In the case of government securities such documentation shall include the information as specified in subsection (b)(4)(C) of this section.

(C) In the case of the enterprise fund such documentation shall include the information as specified in subsection (b)(5)(C) of this section.

(2) When a closure plan is required to be submitted as required in Article 6, or when the amendment of a cost estimate is required to be submitted as required in Articles 6 or 9; or

(3) If an operator fails to increase the balance of a trust fund or an enterprise fund in accordance with section 18474(c) of this Article.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsections (b)(5)(C)2. and (c)(2) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18482. Release from Financial Assurance Requirements for Closure Costs.

(a) After approving the closure of a major waste tire facility as specified in Article 6 of Chapter 6, the Board or its designee shall notify the operator in writing, that the operator is no longer required by this Article to maintain financial assurance for closure of a particular facility; or

(b) When operational control of a major waste tire facility is transferred, the existing operator shall remain subject to the requirements of this Article until the new operator provides acceptable financial assurances to the Board or its designee. The Board or its designee shall notify the previous operator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 40502 and 42820. Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (a) and repealer and adoption of forms transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

Article 10. Financial Responsibility for Operating Liability Claims of Major Waste Tire Facilities

§ 18485. Scope and Applicability.

(a) This Article requires operators of major waste tire facilities to demonstrate adequate financial ability to compensate third parties for bodily injury and property damage caused by facility operation.

(b) Operators of all major waste tire facilities, except state and federal operators, shall comply with the requirements of this Article upon application for issuance of a major waste tire facilities permit pursuant to Chapter 6, Article 1, section 18420.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of printing error in article heading (Register 92, No. 40).
5. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
7. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 5 (Register 93, No. 26).
9. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (a) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18486. Definitions.

(a) When used in this Article, the following terms shall have the meanings described in Chapter 5, Article 3.5, section 18281:

(1) "Assets";
(2) "Current assets";
(3) "Current liabilities";
(4) "Financial reporting year";
(5) "Liabilities";
(6) "Net working capital";
(7) "Net worth";
(8) "Parent corporation"; and
(9) "Tangible net worth".

(b) When used in this Article, the following terms shall have the meanings given below:

(1) "Accidental occurrence" means an event, including pollution exposure, which occurs during the operation of a major waste tire facility prior to closure, that results in bodily injury and/or property damage, and includes continuous or repeated exposure to conditions, neither expected nor intended from the standpoint of the facility operator.

(2) "Admitted carrier" means an insurance company entitled to transact the business of insurance in this state, having complied with the laws imposing conditions precedent to transactions of such business.

(3) "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."

(4) "Bodily injury" means any injury to the body, sickness or disease sustained by a person, including death resulting from any of these at any time. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury." "Bodily injury" excludes:

(A) "Bodily injury" expected or intended from the standpoint of the operator. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

(B) "Bodily injury" for which the operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the operator would have in the absence of the contract or agreement.

(C) Any obligation of the operator under a workers compensation, disability benefits or unemployment compensation law or any similar law.

(D) "Bodily injury" to:

1. An employee of the operator arising out of and in the course of employment by the operator; or

2. The spouse, child, parent, brother or sister of that employee as a consequence of subsection (b)(4)(D)1 above.

This exclusion applies:

a. Whether the operator may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

(E) "Bodily injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any operator. Use includes operation and loading or unloading. This exclusion does not apply to:

1. Parking an "auto" on, or on the ways next to, premises the operator owns or rents, provided the "auto" is not owned by or rented or loaned to the operator;

2. "Bodily injury" arising out of the operation of any of the equipment listed in paragraph (F)2. or (F)3. of the definition of "mobile equipment", found in subsection 12 below.

(5) "Corporate guarantee" means a contract meeting the requirements of section 18494 of this Article through which a guarantor promises that, if an operator fails to pay a claim by a third party for bodily injury and/or property damage caused by an accidental occurrence, the guarantor shall pay the claim on behalf of the operator.

(6) "Excess coverage" means assurance for third party bodily injury and property damage costs that are above a specified level (i.e., above the primary coverage level or a limit of lower excess coverage) but up to a specified limit.

(7) "Financial means test" means the financial assurance mechanism specified in section 18493 of this Article by which an operator demonstrates his or her ability to pay third party claims for bodily injury and property damage caused by accidental occurrences by satisfying the prescribed set of financial criteria.

(8) "Government securities" means financial obligations meeting the requirements of section 18490 of this Article that are issued by a federal, state, or local government, including but not limited to, general obligation bonds, revenue bonds, and certificates of participation.

(9) "Guarantor" means a parent corporation, or a corporation with a substantial business relationship to the operator who guarantees payment of a present or future obligation(s) of an operator.

(10) "Insurance" means a contract meeting the requirements of section 18491 of this Article by which an insurer promises to pay a claim by a third party for bodily injury and property damage caused by an accidental occurrence.

(11) "Legal defense costs" means expenses that an operator or a provider of financial assurance incurs in defending claims brought:

(A) By or on behalf of a third party for bodily injury and/or property damage caused by an accidental occurrence; or

(B) By any person to enforce the terms of a financial assurance mechanism.

(12) "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

(A) Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

(B) Vehicles maintained for use solely on or next to premises the operator owns or rents;

(C) Vehicles that travel on crawler treads;

(D) Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

1. Power cranes, shovels, loaders, diggers or drills; or

2. Road construction or resurfacing equipment such as graders, scrapers or rollers;

(E) Vehicles not described in (A), (B), (C) or (D) above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

1. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

2. Cherry pickers and similar devices used to raise or lower workers;

(F) Vehicles not described in (A), (B), (C) or (D) above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

1. Equipment designed primarily for:

a. Snow removal;

b. Road maintenance, but not construction or resurfacing;

c. Street cleaning;

2. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

3. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

(13) "Primary coverage" means the first priority coverage for third party bodily injury and property damage costs up to a specified limit when used in combination with other coverage.

(14) "Property damage" means physical injury to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that is not physically injured. "Property damage" excludes:

(A) "Property damage" expected or intended from the standpoint of the operator.

(B) "Property damage" for which the operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the operator would have in the absence of the contract or agreement.

(C) "Property damages" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any operator. Use includes operation and loading and unloading. This exclusion does not apply to:

1. Parking an "auto" on, or on the ways next to, premises the operator owns or rents, provided the "auto" is not owned by or rented or loaned to the operator;

2. "Property damage" arising out of the operation of any of the equipment listed in paragraph (F)2. or (F)3. of the definition of "mobile equipment", found in subsection 12 above.

(D) "Property damage" to:

1. Property the operator owns, rents, or occupies;

2. Premises the operator sells, gives away or abandons, if the "property damage" arises out of any part of those premises;

3. Property loaned to the operator;

4. Personal property in the operator's care, custody or control;

5. That particular part of real property on which the operator or any contractors or subcontractors working directly or indirectly on the operator's behalf are performing operations, if the "property damage" arises out of those operations; or

6. That particular part of any property that must be restored, repaired or replaced because the operator's work was incorrectly performed on it.

(15) "Provider of financial assurance" means an entity, other than the operator, that provides financial assurance to the operator of a major waste tire facility, including a trustee, an insurer, or a guarantor.

(16) "Substantial business relationship" means a business relationship that arises from a pattern of recent or ongoing business transactions.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Amendment of subsection (b)(1) and redesignation of former subsections (b)(4)(D)1. and 2. as subsections (b)(4)(D)a. and b. filed 4-1-2003; operative 5-1-2003 (Register 2003, No. 14).

§ 18487. Amount of Required Coverage.

(a) An operator of one or more major waste tire facilities shall demonstrate financial responsibility for compensating third parties for bodily injury and property damage caused by accidental occurrences, including exposures to pollution.

(b) The required amounts of coverage shall be:

(1) $500,000 per occurrence with a $500,000 annual aggregate for each facility permitted for 5,000 to 200,000 tires or tire equivalents; or

(2) $1,000,000 per occurrence with a $1,000,000 annual aggregate for each facility permitted for 200,001 tires or more or corresponding tire equivalents.

(c) The required amounts of coverage shall be exclusive of legal defense costs, deductibles and self-insured retentions.

(d) The required amounts of coverage shall apply exclusively to an operator's facility or facilities located in the State of California.

(e) An operator may use one or more mechanisms to provide proof of financial assurance.

(f) If a trust fund or government securities is depleted to compensate third parties for bodily injuries and/or property damages caused by accidental occurrences, the operator shall, within one year of the depletion, demonstrate financial responsibility for the full amount of coverage required by section (a) by replenishing the depleted mechanism(s) and/or acquiring additional financial assurance mechanism(s).

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (b) and adoption of subsections (b)(1) and (b)(2) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (a) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18488. Acceptable Mechanisms and Combinations of Mechanisms.

(a) Subject to the limitations of subsections (c) and (d) of this section, an operator shall use any one, or any combination of the mechanisms which are defined in the following sections:

(1) Section 18489, Trust Fund

(2) Section 18490, Government Securities

(3) Section 18491, Insurance

(4) Section 18492, Self–Insurance and Risk Management

(5) Section 18493, Financial Means Test

(6) Section 18494, Corporate Guarantee

(7) Section 18494.5, State Approved Mechanism

(b) If a combination of mechanisms are chosen, the operator shall designate one mechanism as "primary" and all others as "excess" coverage.

(c) The government securities and self–insurance and risk management mechanisms are acceptable only for major waste tire facilities operated by government agencies.

(d) The financial means test and corporate guarantee mechanisms are acceptable only for major waste tire facilities operated by private firms.

(1) A private operator may combine a financial means test with a corporate guarantee only if, for the purpose of meeting the requirements of the financial means test, the financial statements of the operator are not consolidated with the financial statements of the guarantor.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Amendment of subsection (a) and new subsection (a)(7) filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18489. Trust Fund.

(a) The trust fund shall have a trustee that is authorized to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The trust agreement shall be established by using form CIWMB 145 "Trust Agreement" (12/91) which is incorporated herein by reference; and also shall contain original signature of grantor and trustee. (See Appendix A.)

(c) If, at any time, the value of the trust fund is greater than the required amount of coverage minus the amount of coverage demonstrated by another mechanism, the operator may request in writing that the Board or its designee authorize the release of the excess funds. The Board or its designee shall review the request, and if any excess funds are verified, the Board or its designee shall instruct the trustee to release the funds.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (b) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18490. Government Securities.

(a) The terms of issuance of government securities shall specify that proceeds from the sale of the securities shall be deposited into a financial assurance mechanism that meets the requirements of section 18490(b) below.

(b) The securities shall have been issued and the proceeds already deposited into the financial assurance mechanism that provides equivalent protection to a trust fund by meeting the following requirements:

(1) Proceeds from the sale of securities shall be used exclusively to pay claims by third parties for bodily injury and property damage caused by accidental occurrences and shall remain inviolate against all other claims, including any claims by the operator, the operator's governing body, and the creditors of the operator and its governing body;

(2) The financial operations of the provider of the financial assurance are regulated by a federal or state agency, or the provider is otherwise certain to maintain and disburse the assured funds properly;

(3) If the provider of financial assurance has authority to invest revenue deposited into the mechanism, the provider shall exercise investment discretion similar to a trustee; and

(4) The mechanism meets other requirements that the Board or its designee determines are necessary to ensure that the assured funds shall be available in a timely manner.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18491. Insurance.

(a) The issuer of the insurance policy shall be an insurer that, at a minimum, is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(b) If coverage is not available as specified in (a) above, the operator may seek coverage by an insurer which, at a minimum, shall be eligible to provide insurance as an excess or surplus lines insurer in California.

(c) If coverage is obtained as described in section (b) of this section, the insurance shall be transacted by and through a surplus line broker currently licensed under the regulations of the California Department of Insurance and upon terms and conditions prescribed in the California Insurance Code (CIC), Division 1, Part 2, Chapter 6.

(d) The Board or its designee may object to the use of any insurer at anytime, whether before or after placement of coverage based on information obtained from, but not limited to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non–Admitted Insurers Quarterly List.

(e) Each insurance policy shall be either:

(1) Evidenced by a "Certificate of Liability Insurance" established by using form CIWMB 146 "Certificate of Liability Insurance" (12/91), which is incorporated herein by reference (See Appendix A.); or

(2) Amended and evidenced by a "Liability Insurance Endorsement" established by using form CIWMB 147 "Liability Insurance Endorsement" (12/91), which is incorporated herein by reference. (See Appendix A.)

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsections (e)(1)–(2) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18492. Self–Insurance and Risk Management.

(a) To use the self–insurance and risk management mechanism an operator shall:

(1) Be a public entity;

(2) Be self–insured;

(3) Employ a risk manager;

(4) Have an active safety and loss prevention program that seeks to minimize the frequency and magnitude of third party damages caused by accidental occurrences and other self–insured losses; and

(5) Have procedures for and a recent history of timely investigation and resolution of any claims for third party damages caused by accidental occurrences and other self–insured losses; and

(6) Satisfy any other reasonable conditions including but not limited to the submittal of audited financial statements that the Board or its designee determines are needed to ensure that the assured amount of funds shall be available in a timely manner.

(b) This coverage shall be demonstrated by using form CIWMB 148 (12/91), "Certificate of Self–Insurance and Risk Management", which is incorporated herein by reference. (See Appendix A.)

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18493. Financial Means Test.

(a) To pass the financial means test, an operator or a guarantor shall be a private entity and shall meet the criteria of section (c) or (d) based on independently audited year–end financial statements for the latest completed fiscal year.

(b) The phrase "amount of liability coverage to be demonstrated by the test" as used in sections (c) and (d) refers to the amount of liability coverage required by section 18487 of this Article.

(c) The operator or guarantor shall have:

(1) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test; and

(2) Tangible net worth of at least $10 million; and

(3) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the amount of liability coverage to be demonstrated by the test.

(d) The operator or guarantor shall have:

(1) A current rating for its most recent bond issuance of AAA, AA, A, or BBB issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(2) Tangible net worth of at least six times the amount of liability coverage to be demonstrated by the test; and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the amount of liability coverage to be demonstrated by the test.

(e) Within 90 days after the close of each financial reporting year, the operator or the guarantor shall submit the following items to the Board or its designee and, in the case of a guarantor, to the operator;

(1) A letter on the operator's or guarantor's official letterhead stationary that is worded and completed as specified in form CIWMB 149 "Instructions for the Letter from the Chief Financial Officer Financial Means Test for Liability" (12/91), which is incorporated herein by reference and which contains an original signature of the operator's or guarantor's chief financial officer. (See Appendix A.) An operator or guarantor shall use form CIWMB 149 to demonstrate or guarantee financial responsibility for liability coverage only. If the operator or guarantor is using a similar financial means test to demonstrate liability coverage for facilities in California or other states, such as but not limited to, hazardous waste treatment, storage, or disposal facilities, or solid waste landfills, or other waste tire facilities, the operator shall list all facilities covered by the financial means test, whether in California or not.

(2) A copy of an independent certified public accountant's report on examination of the operator's or guarantor's financial statements for the latest completed fiscal year, with a copy of the operator's or guarantor's financial statements for the latest completed fiscal year.

(3) A letter from an independent certified public accountant stating that:

(A) He or she has compared the data in the letter in section (e)(1), from the chief financial officer specified as having been derived from the financial statements for the latest completed fiscal year of the operator or the guarantor, with the amounts in the financial statements; and

(B) Based on the comparison, no matters came to his or her attention that caused him or her to believe that the specified data should be adjusted.

(4) If the operator or the guarantor is required to make such a filing, a copy of the operator's or guarantor's most recent form 10–K filed with the U.S. Securities and Exchange Commission.

(f) The Board or its designee may require updated financial statements at any time from the operator or guarantor. If the Board or its designee finds that the operator no longer meets the financial means test requirements of sections (c) or (d) based on such reports or other information, including but not limited to, credit reports and reports from other state agencies, the operator shall obtain alternate coverage within 60 days after receiving the notification of such a finding.

(g) If an operator using the financial means test fails to meet the requirements of the financial means test under sections (c) or (d), the operator shall obtain alternate coverage within 60 days after the determination of such failure.

(h) If the operator fails to obtain alternate coverage within the times specified in sections (f) or (g), the operator shall notify the Board or its designee by certified mail within 10 days of such failure.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsections (a) and (b) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (e)(1) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18494. Corporate Guarantee.

(a) The guarantor shall be:

(1) A parent corporation of the operator; or

(2) A firm whose parent corporation is also the parent corporation of the operator; or

(3) A firm engaged in a substantial business relationship with the operator and issuing the corporate guarantee as an act incident to that business relationship.

(b) The guarantor shall meet the requirements of the financial means test under sections 18493(c) or (d) of this Article based on the guarantor's audited year–end financial statements.

(c) The corporate guarantee shall be worded and completed as specified by form CIWMB 150 "Corporate Guarantee" (12/91), which is incorporated herein by reference. (See Appendix A.)

(d) The terms of the corporate guarantee shall specify that if the operator fails to satisfy a judgment or an award for bodily injury and property damage to third parties caused by accidental occurrences, or fails to pay an amount agreed in settlement of a claim arising from or alleged to arise from such injury and damage, the guarantor shall satisfy such judgment, award, or settlement agreement up to the limits of the corporate guarantee.

(e) If the guarantor fails to meet the requirements of the financial means test under section 18493(c) or (d) of this Article or wishes to terminate the corporate guarantee, the guarantor shall send notice of such failure or termination by certified mail to the operator and the Board or its designee within 90 days after the end of that financial reporting year. The corporate guarantee shall terminate no less than 60 days after the date that the operator and the Board or its designee have received the notice of such failure or termination, as evidenced by the return receipts. The guarantor shall establish alternate coverage as specified in section 18488 of this Article on behalf of the operator within 60 days after such notice, unless the operator has done so.

(f) The Board or its designee may require updated financial statements at any time from a guarantor. If the Board or its designee finds, on the basis of such reports or information from other sources, including but not limited to, credit reports and reports from other state agencies, that the guarantor no longer meets the financial means test requirements of section 18493(c) or (d) of this Article, or any requirements of section 18494 of this Article, the Board or its designee shall notify the guarantor and operator of such finding by certified mail. The guarantor shall establish alternate coverage as specified in section 18488 of this Article on behalf

of the operator within 60 days after such notice, unless the operator has done so.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsections (a)(3) and (e) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (c) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18494.5. State Approved Mechanism.

(a) An operator may satisfy the requirements of this Chapter by obtaining any other mechanism that meets the following criteria, and that is approved by the Board.

(1) The financial assurance mechanism(s) must ensure that the amount of funds assured is sufficient to cover the costs assured when needed;

(2) The financial assurance mechanism(s) must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanism(s) must be obtained by the operator before the first waste is received at a new facility and before any other financial mechanism is cancelled at existing facilities. The financial mechanism must be maintained until the operator is released from the financial assurance requirements under this Chapter.

(4) The financial assurance mechanism(s) must be legally valid, binding, and enforceable under California and Federal law.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18495. Substitution of Mechanisms by Operator.

(a) An operator may substitute any alternate financial assurance mechanism(s) as described in sections 18489 through 18494 of this Article, provided that at all times the operator maintains an effective mechanism or a combination of effective mechanisms, that satisfies the requirements of section 18488 of this Article, and informs the Board or its designee of such substitution.

(b) In the event an operator obtains alternate financial assurance, it may request that the Board or its designee terminate or authorize the termination of the previous financial assurance mechanism. The operator shall submit such a request in writing with evidence of alternate financial assurance.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18496. Cancellation or Nonrenewal by a Provider of Financial Assurance.

(a) Except as otherwise provided in section 18497 of this Article, a provider of financial assurance may cancel or not renew a financial assurance mechanism by sending a notice of termination by certified mail to the operator and the Board or its designee.

(b) Termination of a corporate guarantee shall occur no less than 60 days after the date on which the operator and the Board or its designee have received the notice of termination, as evidenced by the return receipts.

(c) Cancellation or nonrenewal of insurance or self–insurance and risk management coverage shall occur no less than 60 days after the date on which the operator and the Board or its designee have received the notice of termination, as evidenced by the return receipts; except in the case of non–payment of insurance premiums, in which case cancellation shall occur no less than 10 days after the date on which the operator and the Board or its designee have received the notice of termination.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18497. Bankruptcy or Other Incapacity of Operator or Provider of Financial Assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, Title 11 U.S.C. sections 101–1330 in which:

(1) The operator is named as debtor, the operator shall notify the Board or its designee by certified mail of such commencement.

(2) A provider of financial assurance is named as debtor, such provider shall notify the operator and the Board or its designee by certified mail of such commencement.

(b) An operator shall be deemed to be without the required financial assurance in the event of bankruptcy of its provider of financial assurance, or in the event of a suspension or revocation of the authority of the provider of financial assurance to issue a mechanism. If such an event occurs, the operator shall demonstrate alternate financial assurance as spe-

cified in this Article within 60 days after receiving notice of the event. If the operator fails to obtain alternate financial assurance within 60 days, the operator shall notify the Board or its designee within 10 days of such failure.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (b) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18498. Recordkeeping and Reporting.

(a) An operator shall maintain evidence of all financial assurance mechanisms until the operator is released from the requirements as specified in section 18499 of this Article. This evidence shall be maintained at each major waste tire facility, whenever possible, or at an alternate, designated location approved by the Board or its designee and which is accessible to the operator, and available for Board staff review.

(b) An operator shall maintain the following types of evidence, and shall maintain an original or copy of each mechanism used to demonstrate financial responsibility under this Article:

(1) Trust Fund. An operator using a trust fund shall maintain a copy of the trust agreement and statements verifying the current balance of the fund.

(2) Government Securities. An operator using government securities shall maintain a copy of the following:

(A) All official resolutions, forms, letters, or other pertinent documents generated to issue the securities;

(B) The terms of issuance of the securities; and

(C) With respect to the mechanism into which the funds generated by the issuance are deposited:

1. Identify the major waste tire facilities covered by the fund and the amount of third party liability coverage;

2. Include a letter from an authorized officer of the institution maintaining the mechanism identifying the amount of funds provided by the mechanism as of the anniversary date of each mechanism for each year; and

3. Include a copy of the evidence documenting that the mechanism meets the requirements of section 18490(b) of this Article.

(3) Insurance. An operator using insurance shall maintain the original or a copy of the insurance policy in addition to the original or a copy of the liability insurance endorsement or the certificate of liability insurance.

(4) Self–Insurance and Risk Management. An operator using self–insurance and risk management shall maintain:

(A) The name and qualifications of the currently employed risk manager;

(B) Pertinent documents verifying the ongoing activity of the operator's safety and loss prevention program; and

(C) Pertinent documents showing procedures for timely investigation and resolution of any claims for third party damages caused by accidental occurrences and other self–insured losses.

(5) Financial Means Test. An operator using a financial means test shall maintain a copy of the information specified in section 18493(e) of this Article.

(6) Corporate Guarantee. An operator using a corporate guarantee shall maintain documentation of the corporate guarantee as specified in sections 18494(a),(b),and (c) of this Article.

(c) An operator shall submit the documentation of current evidence of financial responsibility listed in section 18498(b) to the Board or its designee whenever a financial assurance mechanism is established or amended:

(1) In the case of a trust fund such documentation shall include the original mechanism and a copy of the current statement verifying the balance of the account;

(2) In the case of government securities such documentation shall include the information as specified in section 18498(b)(2) of this Article;

(3) In the case of a financial means test, or a corporate guarantee, such documentation shall include the original mechanism; or

(4) In the case of insurance or self–insurance and risk management, such documentation shall include the original liability insurance endorsement, certificate of liability insurance, or certificate of self–insurance and risk management.

(d) An operator shall submit written notice to the Board or its designee of the number of claims paid and the total dollar amount paid as a result of an accidental occurrence at an operating facility. This information shall be compiled for the previous calendar year and submitted to the Board or its designee by March 1st of each year.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of subsection (b) transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).

§ 18499. Release of an Operator from the Requirements.

(a) After approving the closure of the major waste tire facility as specified in Article 6, the Board or its designee shall notify the operator and the provider of financial assurance in writing, that he or she is no longer required to demonstrate financial responsibility by this Article for third party operating liability, at the particular facility.

(b) When operational control of a major waste tire facility is transferred, the existing operator shall remain subject to the requirements of this Article until the new operator provides acceptable financial assurances to the Board or its designee.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

HISTORY

1. New section filed 2–10–92 as an emergency; operative 2–10–92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6–9–92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5–29–92 as an emergency; operative 6–8–92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–6–92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9–28–92 as an emergency; operative 10–6–92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–3–92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1–25–93 as an emergency; operative 2–2–93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6–2–93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–25–93 order transmitted to OAL 5–26–93; disapproved by OAL on 6–22–93 (Register 93, No. 26).
6. New section filed 6–22–93 as an emergency; operative 6–22–93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10–20–93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6–22–93 emergency order including amendment of text and repealer and adoption of forms transmitted to OAL 9–23–93 and filed 11–3–93 (Register 93, No. 45).
9. Change without regulatory effect moving forms to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

Article 11. Financial Assurances Enforcement Procedures for Major Waste Tire Facilities

§ 18499.1. Scope and Applicability.

All operators of major waste tire facilities shall be subject to the requirements of this article, except state and federal operators.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New article 11 (sections 18499.1–18499.9) and section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.2. Definitions.

(a) "Degree of non–compliance" means the status of compliance of an operator with the financial assurance requirements. An operator is either: 1) partially out of compliance with the requirements ("Minor"); or 2) completely out of compliance with the requirements ("Major").

(b) "Potential for harm" means the degree to which operator's actions adversely affect the public health, safety and the environment. This potential is based on the number of tires for which that facility is permitted.

(1) Major: 1,000,001 tires or more, or tire equivalents.

(2) Moderate: 200,001 to 1,000,000 tires or tire equivalents.

(3) Minor: 5000 to 200,000 tires or tire equivalents.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. References: Sections 40502, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.3. Notice of Violation.

(a) The CIWMB shall send a written Notice of Violation to an operator violating the requirements of Articles 9 or 10 of this Chapter (commencing with section 18470).

(b) The Notice of Violation shall:

(1) describe the violation which CIWMB staff believe is occurring; and

(2) describe the consequences of continued failure to comply or respond.

(c) All operators shall submit a response to a Notice of Violation within 10 working days from receipt of the Notice of Violation.

(d) The CIWMB may consider all contacts with an operator as "good faith" efforts to comply with this Chapter, and the CIWMB may extend the timeframe for an operator to respond and/or comply, as the CIWMB deems necessary, to assure adequate financing for closure activities and operating liability.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.4. Issuance of Notice and Order, Cleanup and Abatement Order, and/or Stipulated Notice and Order.

(a) If an operator fails to respond to the Notice of Violation within the specified timeframe, the CIWMB shall draft and send a Notice and Order or Cleanup and Abatement Order to the operator.

(b) An operator shall respond to the CIWMB with evidence of compliance, or request an alternate schedule for compliance, within 10 working days from receipt of the Order.

(c) If an operator responds to the Order by offering partial compliance immediately, and full compliance over a period of time, which is acceptable to the CIWMB, the CIWMB may enter into a Stipulated Notice and Order with the operator.

(d) If an operator fails to conform with the compliance schedule within the specified timeframe as provided in the Notice and Order, Cleanup and Abatement Order or Stipulated Notice and Order, further enforcement action may be taken by the CIWMB, as specified in the Notice and Order, Cleanup and Abatement Order, or Stipulated Notice and Order.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. References: Sections 40502, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.5. Compliance Options.

(a) The CIWMB may consider compliance options other than imposing penalties, to assure adequate financing for closure activities and operating liability. The CIWMB may consider options that include, but are not limited to:

(1) Placing restrictions on current financial assurance mechanism(s) being used by the operator such as more frequent reporting requirements.

(2) Prohibiting use of current financial assurance mechanism(s) being used by the operator, and requiring the operator to establish an alternate mechanism as prescribed in section 18473 and 18488 of this Title.

NOTE: Authority cited: Section 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850 and 42850.1 Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.6. Penalty Calculations.

(a) If the CIWMB chooses to impose a penalty, the daily penalty shall equal an amount determined by the gravity–based matrix, in Table 1, using the degree of non–compliance and the potential for harm as the deciding factors, added to the economic benefit an operator receives from non-compliance with this Chapter.

Table 1.

	Degree of Non–Compliance	
Potential for Harm	*Major*	*Minor*
Major	$10,000 to $905	$904 to $804
Moderate	$803 to $703	$702 to $652
Minor	$651 to $551	$550 to $500

(1) The economic benefit portion of a penalty for lack of liability coverage shall be based on a minimum annual premium for liability insurance, as identified by a CIWMB survey of the insurance industry. The premium is multiplied by the number of years an operator is out of compliance (rounded up to the next whole year if a partial year of non–compliance exists).

(2) The economic benefit portion of a penalty for lack of coverage for closure costs shall be based on the current cost of a letter of credit or bond,

as identified by a CIWMB survey of the banking industry or insurance industry, respectively. The cost for a letter of credit or bond is multiplied by the pro–rata factor for the length of time of non–compliance.

(b) Determinations of penalty amounts may be modified by the CIWMB for one or more of the following reasons:

(1) Evidence that coverage has been subsequently provided, such as bank statements, letter from county treasurer verifying balance of fund, certificate demonstrating adequate coverage, etc.

(2) Evidence of a payment schedule, if applicable, detailing the operator's good faith efforts has been subsequently provided, such as past deposits to the financial assurance mechanism, etc.

(3) An operator's good faith efforts to comply or lack of good faith.

(4) An operator's degree of willingness to comply.

(5) An operator's history of compliance.

(6) Other unique factors such as size of operation, threat to public health and safety and the environment.

(c) Penalties may be pursued by the CIWMB administratively or through superior court as specified in Public Resources Code, sections 42850 and 42850.1.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.7. Processing and Collection of Civil Penalty.

Processing and collection of civil penalties shall be made by the CIWMB as provided in Public Resources Code Section 42855.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850, 42850.1 and 42855, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.8. Appeals Process.

Any aggrieved person may appeal a Notice and Order or Cleanup and Abatement Order by the CIWMB, according to Public Resources Code, section 42854.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42850, 42850.1 and 42854, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

§ 18499.9. Continued or Recurring Violations.

(a) If an operator pays an initial penalty but fails to correct the violation pursuant to Notice and Order or Cleanup and Abatement Order, or has recurring violations within a one year period from the date of the preceding Notice of Violation:

(1) the CIWMB may re–initiate the enforcement process;

(2) the CIWMB may pursue action to revoke a permit, according to Public Resources Code section 42843, and/or pursue closure of the facility;

(3) the CIWMB may pursue both (1) and (2) above.

NOTE: Authority cited: Sections 40502, 42850 and 42850.1, Public Resources Code. Reference: Sections 40502, 42843, 42850 and 42850.1, Public Resources Code.

HISTORY

1. New section filed 4–1–2003; operative 5–1–2003 (Register 2003, No. 14).

Chapter 7. Special Waste Standards

NOTE: Authority cited: Sections 68042 and 66770, Government Code and Section 24389, Health and Safety Code. Reference: Chapter 1 of Title 7.8 and Sections 66770, 66771, Government Code and Chapter 3.5 of Division 29, Health and Safety Code.

HISTORY

1. New Chapter 7 (Articles 1–5, consecutive; Sections 18500–18546, not consecutive) filed 8–18–78; effective thirtieth day thereafter (Register 78, No. 33).
2. Repealer of Chapter 7 (Articles 1–5, Sections 18500–18548, not consecutive) filed 2–3–83; effective thirtieth day thereafter (Register 83, No. 6).

Article 1. General

§ 18500. Scope.

The regulations contained in chapter 7 pertain to the California Integrated Waste Management Board's requirements regarding activities related special wastes, including but not limited to household hazardous wastes.

NOTE: :Authority Cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 40052 and 46400, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

Article 1.1. Definitions

§ 18502. Definitions.

(a) The following definitions shall apply to the regulations contained in this chapter.

(1) "Act" means the Solid Waste Disposal Site Hazard Reduction Act of 1989 (Statutes of 1989, chapter 1095).

(2) "Account" means the Solid Waste Disposal Site Cleanup and Maintenance Account described in section 46800 of the Public Resources Code.

(3) "Applicant" means a city, county or local agency applying for a grant award.

(4) "Board" means the California Integrated Waste Management Board.

(5) "DTSC" means the Department of Toxic Substances Control.

(6) "Fiscal Year" means the year commencing on the first day of July and ending on June 30 of each year.

(7) "Grant" means an award of funds in either one of the following manners

(A) "Discretionary Grant" means an award of funds to a city, county or local agency which is based on the evaluation and selection of the applicant's proposed or implemented Household Waste Program pursuant to section 18533.1 of article 2.2, and which is subject to fund availability in the Account after all non–discretionary grants have been awarded.

(B) "Non–discretionary Grant" means an award of funds to a city, county or local agency which has implemented a Household Hazardous Waste Program during the fiscal year prior to the grant application; and which meets the specific criteria for the non–discretionary award pursuant to section 18515 of article 2.1.

(8) "Grant Agreement" means the written document, any amendment(s) and written change orders thereto, which is signed by the Board or its designated representative and the grant recipient and which defines the terms, provisions and conditions governing the grant. The terms of the grant agreement shall be for a period negotiated between the grant recipient and the Board.

(9) "Grant Recipient" means the city, county or local agency which receives a grant award from the Board.

(10) "Grant Year" means that time period in which the grant application submittal process, selection and award distribution will occur. The time period will begin on the first day of July in one year and end on June 30 of the next calendar year.

(11) "Hazardous Waste" (HW) means waste as defined in section 40141 of the Public Resources Code and section 25117 Health and Safety Code: that is, waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(12) "Household Hazardous Waste" (HHW) means waste materials determined by the Board, the Department of Toxic Substances Control (DTSC), the State Water Resources Control Board (SWRCB), or the Air Resources Board (ARB) to be:

(A) Of such a nature that they must be listed as hazardous in state statutes and regulations; or are

(B) Toxic/ignitable/corrosive/reactive; and

(C) Carcinogenic/mutagenic/teratogenic; which is discarded from householders as opposed to businesses.

(13) "HHW Program" means a program sponsored by a city, county or local agency which results in the separation of HW and/or HHW from the solid waste stream. An HHW Program may include, but is not limited to, the following activities:

(A) Load Checking Programs;

(B) Collection Programs

1) Periodic

2) Permanent

3) Mobile Collection Program

4) Residential Pick–up Service;

(C) Waste Control and Enforcement Programs;

(D) Educational Programs; and/or

(E) Other program activities incorporating reuse, reduction, or recycling of HW and HHW.

(14) "Jurisdiction" means a city, county, or local agency with responsibility for waste management.

(15) "Load Checking Program" means a program which provides for physical inspection and removal of hazardous wastes from the incoming waste stream at any solid waste facility, as defined in section 40194 of the Public Resources Code.

(16) "Local agency" means any public agency which is responsible for waste management and which sponsors a program(s) to prevent the disposal of H and/or HHW at a solid waste disposal facility.

(17) "Local Funding" means those monies originating solely from a jurisdiction which are to be used or were used to conduct a HHW collection program.

(18) "Mobile Collection Program" means two or more permanent household hazardous waste collection sites utilizing at least one transportable container for the sites and operated on an intermittent schedule.

(19) "Periodic HHW Collection Program" means a program in which a jurisdiction sponsors HHW collection activities at least once a year with each collection event beginning and ending within a one week period (seven days).

(20) "Permanent HHW Collection Program" means a program in which a jurisdiction sponsors the maintenance of a permanent HHW collection program at a specific site which is open to the public at least for one day, or a portion of that day, each week.

(21) "Proposal" means that part of a discretionary grant application from a jurisdiction specifying its intent to establish or implement a HHW Program, commencing in the fiscal year following the application period, which consists of a newly established program or incorporates a new or added service or capability to an existing HHW program.

(22) "Recycling Activities" means those projects which divert hazardous materials from non–hazardous solid waste landfills; and which utilize one or more of the processes for collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the market place. "Recycling" does not include transformation, as defined in section 40201 of the Public Resources Code.

(23) "Reduction" means to use only the required amount of a product which contains a hazardous ingredient(s) for a specific task; and/or to use a product containing a lesser amount of a hazardous ingredient(s) in comparison with other brands of the same type of product.

(24) "Regional" means any area which included two or more jurisdictions responsible for waste management. This includes two or more cities, two or more counties, or two or more local agencies, or the combination of a city (cities), a county (counties) and/or local agency (agencies).

(25) "Residential Pick–up Service" means the service sponsored by a city, county or local agency for the residents of a community whereby HHW is picked up from each resident's home.

(26) "Reuse" means the use of a product containing a hazardous ingredient after it is no longer needed by the person who originally purchased and/or used the product.

(27) "Waste Control and Enforcement Programs" means a program as provided in section 46400(b) of the Public Resources Code.

NOTE: Authority cited: Sections 40502, 46205 and 46208, Public Resources Code. References: Section 40180, 40201, 46400 and 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

Article 2. General Provisions

§ 18504. Scope and Applicability.

a) The regulations contained in this article set forth the criteria needed by cities, counties and local agencies responsible for waste management to apply for and receive a grant of funds from the Solid Waste Disposal Site Cleanup and Maintenance Account (Account).

b) This article applies to all cities, counties and local agencies which are either:

1. currently implementing a program or activity which prevents the disposal of HW, including HHW into solid waste landfills, or

2. proposing the establishment of programs or services to prevent the disposal of HW; including HHW; into solid waste landfills.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18505. Programs Eligible for Funding.

HHW Programs eligible for funding from the account include, but are not limited to, the following activities:

(a) Load Checking Programs;

(b) Collection Programs

1) Periodic

2) Permanent

3) Mobile

4) Residential Pick–up Service;

(C) Waste Control and Enforcement Programs;

(D) Educational Programs; and/or

(E) Other program activities incorporating reuse, reduction, or recycling of HW and HHW.

NOTE: Authority cited: Sections 46205, 46208, 46400 and 46401, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18506. Grant Application Process.

a) A jurisdiction, with an eligible program, shall submit the documents specified in section 18515 of article 2.1 or sections 18533 and 18533.1 of article 2.2, whichever are applicable, in order to apply for a grant award.

b) Documents required in (a) of this section shall be submitted to the principal place of business of the California Integrated Waste Management Board, in care of the HHW Management Program.

c) An original and three (3) copies of the documents required in (a) of this section shall be submitted to the Board. All materials submitted will become the property of the Board and will be retained for a minimum of three years.

d) The required application documents shall be received by the Board on or before the close of the application period specified in either section 18511 of article 2.1 or section 18531 of article 2.2, whichever is applicable.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

Article 2.1. Non–Discretionary Grants

§ 18510. Grant Eligibility.

NOTE: Authority cited: Sections 46205, 46208 and 46401, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).
3. Change without regulatory effect repealing article 2.1 (sections 18510–18522) and section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18511. Grant Application Period.

NOTE: Authority cited: Sections 46205, 46208 and 46401, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).
3. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18512. Grant Amount.

NOTE: Authority cited: Sections 46205, 46208 and 46401, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).
3. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18515. Contents of the Grant Application.

NOTE: Authority cited: Sections 46205, 46208, 46400 and 46401, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

[The next page is 806.67.]

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment of subsections (b) and (d) and new subsections (e)–(g) filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).
3. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18520. Review of Grant Application.

NOTE: Authority cited: Sections 46205, 46400 and 46401, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18521. Payment of Grant Funds.

NOTE: Authority cited: Sections 46205, 46208, Public Resources Code. References: Sections 46401 and 46810, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

§ 18522. Auditing Requirements.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Change without regulatory effect repealing section filed 3–28–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 13).

Article 2.2. Discretionary Grants

§ 18530. Grant Eligibility.

a) A jurisdiction which has not received a non–discretionary grant in accordance with Article 2.1, Section 18512, and which submits a grant application for a HHW program to ensure that HW, including, but not limited to, HHW, is not disposed of in a solid waste landfill, and which meets the definition of a HHW Program under Section 18502(a)(13) and that of a proposal under Section 18502(a)(21) of this Chapter, is eligible for a discretionary grant.

b) A jurisdiction which has received a non–discretionary grant in accordance with article 2.1, section 18512, remains eligible to receive a discretionary grant under this article for the following:

1) A HHW program which meets the definitions under Section 18502(a)(13) and Section 18502(a)(21) of this Chapter; and/or

2) a portion of an HHW program which was not funded under article 2.1 of this chapter in the same grant year.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

§ 18531. Grant Application Period.

Applications for discretionary grants will be accepted beginning on the first Monday in December of each year commencing in December, 1990, until 4:00 p.m. on the last Friday in February of the next calendar year. Applications received after that date will be returned to the applicant.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

§ 18532. Grant Amount.

The Board may award a discretionary grant to an eligible jurisdiction in an amount to determined by the Board, but the amount shall not exceed $120,000 for any individual grant. The award amount will be based upon the amount of monies remaining in the Account after all non–discretionary grants have been awarded for the previous calendar year.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY
1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18533. Contents of the Grant Application.

Any jurisdiction which applies for a discretionary grant shall submit an application to the Board which includes, but is not limited to, the following:

a) An application cover sheet, CIWMB Form 302, 3/90 which is incorporated by reference.

b) A grant application shall, at a minimum, incorporate the following elements describing the proposed or implemented program:

1) A description of the HHW disposal problem in the applicant's jurisdiction, including, the amount of HHW generated in the geographic area to be serviced. Include a discussion of the jurisidiction's Waste Generation Study as it relates to the identified HHW disposal problem.

2) The HHW Element of the Countywide Integrated Waste Management Plan prepared pursuant to Public Resources Code section 41750.

3) A general description of program goals or objectives for the proposed or completed program, including specific actions which will be taken or have been taken to mitigate the HHW disposal problem. This section must include a description of the program being proposed and discuss the proposed program in relation to the applicant's HHW Element.

4) An identification of the tasks necessary to complete the proposed program and an implementation schedule for the proposed tasks.

5) The geographic area to be serviced, or the geographic area that was serviced.

6) A budget report describing the costs for each completed program or proposed project within the overall HHW program. This shall include the actual or projected costs of staff, hazardous waste contractor fees, and the actual or projected costs for education, public awareness and/or advertising.

7) A description of funding sources other than the Account, which will be used, or which have been used for the program.

8) A report on insurance coverage for the project(s) as required by title 22, California Code of Regulations, section 66264.147, if applicable.

9) A copy of or status report on any required variances or permits from the DTSC, and the federal Environmental Protection Agency generator identification number.

10) A description of any recycling and/or reuse efforts for HHW which will be, or which have been, utilized in conjunction with the proposed project, or completed program, whichever is applicable.

11) A description of public education and awareness efforts to be utilized or which have been utilized.

12) A description of cooperative efforts between local government agencies and interested citizen associations and groups, if any, regarding implementation of the program.

13) Methods of jurisdiction plans to use to evaluate the success of the program, or methods which were used to evaluate the success of the program, whichever is applicable.

14) A resume of management personnel for the program, detailing their qualifications and experience.

15) A resolution from the jurisdiction's governing body authorizing submittal of the grant application and identifying the individual authorized to execute all necessary applications, contracts, agreements and amendments to carry out the purposes specified in the application.

c) The grant application for a discretionary grant may be accompanied by a list of the costs associated with the implementation of specific tasks of the grant application required by (a)(3) in order for the Board to provide partial funding for the program.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 41750, 46400 and 46401, Public Resources Code; section 25135.1(d)(4), Health and Safety Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Repealer of subsection (b) and NOTE and removal of text from section 18533.1 to section 18533 and amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

§ 18533.1. Contents of the Grant Proposal.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 41750 and 46401, Public Resources Code; Section 25135.1(d)(4), Health and Safety Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Removal of text to section 18533 and amendment filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

§ 18534. Review of Grant Application.

a) The Board shall review a discretionary grant application for the following:

1) to verify that the application is complete; and

2) to verify that the grant proposal incorporates the elements required by sections 18533 and 18533.1 of this article; and

3) to evaluate the application to determine its eligibility for partial funding of an HHW Program.

b) The Board may request additional information related to the discretionary grant application required pursuant to section 18533 of this article. The applicant will have 10 (ten) working days, or as specified by the Board, to submit the requested information to the Board or it will be disqualified from consideration for a discretionary grant.

NOTE: Authority cited: Sections 46205 and 46208, Public Resources Code. Reference: Sections 46400 and 46401.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18534.1. Selection of Grant Recipient.

a) The Board shall select one or more grant recipients based upon the recipient's satisfaction of the grant proposal elements required pursuant to section 18533.1 of this article.

b) The Board shall give lower priority for grant awards to grant applicants who have received funding for non–discretionary grants under article 2.1 of this Chapter in the same grant year; and for those applicants who had received discretionary grant funding in the year prior to the current grant year cycle.

NOTE: Authority cited: Sections 46208, Public Resources Code. Reference: Sections 46400 and 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).
2. Amendment of subsection (b) filed 7–22–92; operative 7–22–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 30).

§ 18535. Payment of Grant Funds.

Discretionary grant recipients will be awarded grant funds no later than June 30 of each year, commencing in June, 1991.

NOTE: Authority cited: Sections 46208 and 46400, Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18536. Grant Agreement.

a) The grant recipient and the Board shall enter into a written grant agreement which contains the grant proposal as approved and which identifies and ensures compliance with the terms and conditions specified in section 18536.1 and any other special conditions or terms which the Board may deem necessary.

b) Written Approval of Changes to Grant Agreement. The recipient shall obtain prior written approval from the Board, or its designated representative, for any changes to the grant agreement. All requests shall include a description of the proposed change(s) and the reason(s) for the changes.

NOTE: Authority cited: Section 46208, Public Resources Code. Reference: Section 46205, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

§ 18536.1. Terms and Conditions of a Grant Agreement.

The grant recipient shall comply with the following terms and conditions:

a) Quarterly Progress Reports. The grant recipient shall submit a quarterly progress report to the Board within 30 days following the end of each quarter. The report shall include, but not be limited to:

1) A statement that the program(s) is or is not on schedule, and a description of the program tasks or milestones and the status of each. Pertinent reports or interim findings shall be appended.

2) A discussion of any difficulties or special problems encountered in accomplishing the project tasks.

3) A financial report comparing costs to date with the approved scope of work and the original budget. The report should state whether the program(s) is progressing within the approved budget, and an explanation of any current or anticipated deviations. The report shall include a Balance Sheet showing the program's current assets and liabilities as well as a Statement of Expenditures.

4) A report of any changes in management personnel.

5) The report for the fourth quarter will be the Final Report required pursuant to (e) of this section.

b) Compliance. Grant recipients shall comply with all applicable federal, state and local laws, ordinances, regulations and permits. The recipient shall secure any permits or variances required by the DHS and EPA and any other authorities having jurisdiction over the program(s) including but not limited to, the California Integrated Waste Management Board and the appropriate Regional Water Quality Control Boards. The grant recipients shall maintain or revise all applicable permits, such as solid waste facility permits, as needed.

c) Auditing.

1) All grant recipients shall maintain an accounting system for the program that utilizes generally accepted accounting principles and practices. The Board, the State Controller's Office and the State Auditor General's Office or their designated representative(s) shall have absolute right of access to all of the grant recipient's records pertaining to the grant agreement in order to conduct reviews and/or audits.

2) In addition to accounting records, all source documents associated with the accounting records shall be maintained. Source documents include, but are not limited to, bid summaries, contracts with the grant recipient, change orders showing approval by a city or county engineer, purchase orders, invoices, paid warrants, time sheets, labor distribution reports and payroll registers.

3) The accounting records and source documents shall be retained by the grant recipient for at least three (3) years after expiration of the grant agreement, or until the completion of a Board action and/or resolution of issues which may arise as a result of any litigation, claim negotiation or audit.

4) If an audit reveals that grant funds have not been spent in accordance with the grant agreement, the recipient shall be required to forfeit the unexpended portion of the grant and repay any improperly spent monies, plus interest at the rate the state would have earned on this money had it remained in the Account. Such forfeitures shall revert to the Account.

d) Grant Termination. The Board may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is deter-

mined by the Board as a whole, that the recipient has failed to comply with the terms or conditions of the grant agreement. The Board shall notify the recipient within five working days, in writing, of the determination, the reasons for the termination of the grant, and the effective date of termination.

e) Final Report. At the end of each fiscal year during which funds are received, the grant recipient shall submit a final report. The report shall be submitted within 60 days of the end of the fiscal year and include, but not be limited to:

1) A Table of Contents.

2) A brief summary of the objectives of the grant and how these objectives were accomplished.

3) Any findings, conclusions, or recommendations for additional activities which result from the successful completion of the program for the grant year. A statement, if applicable, of future public and/or private support to maintain or further develop the program.

4) A list of contractors who participated, in whole or in part, in the grant program, including the names, addresses and a description of their work.

5) Final Financial Statement for the Program. This report shall provide information that enables the Board to determine the final specific use for all grant funds. It shall indicate all other sources of funds utilized by the program. The report shall also account for all revenues generated by the program.

NOTE: Authority cited: Sections 46205 and 46208 Public Resources Code. Reference: Section 46401, Public Resources Code.

HISTORY

1. New section filed 8–30–90; operative 8–30–90 pursuant to Government Code section 11346.2(d) (Register 90, No. 46).

Article 3. Used Oil Collection Demonstration Grant

HISTORY

1. Article 3 (sections 18550–18551) repealed by operation of Government Code section 11346.1(g) (Register 93, No. 15).

Article 4. General Provisions

HISTORY

1. Article 4 (sections 18552–18554) repealed by operation of Government Code section 11346.1(g) (Register 93, No. 15).

Article 5. Grants

HISTORY

1. Article 5 (sections 18555–18561) repealed by operation of Government Code section 11346.1(g) (Register 93, No. 15).

Chapter 7.2. Playground Safety and Recycling Act Grant Program

Article 1. General

§ 18570. Authority and Purpose.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811, 115812, 115813, 115814, 115815 and 115816, Health and Safety Code.

HISTORY

1. New chapter 7.2 (articles 1–5, sections 18570–18580) article 1 (section 18570) and section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New chapter 7.2 (articles 1–5, sections 18570–18580) article 1 (section 18570) and section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New chapter 7.2 (articles 1–5, sections 18570–18580), article 1 (section 18570) and section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

Article 2. Definitions

§ 18571. Definitions.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115725, 115730, 115735, 115810, 115811, 115812 and 115813, Health and Safety Code; Sections 21067 and 42002, Public Resources Code; and Section 12200, Public Contract Code.

HISTORY

1. New article 2 (section 18571) and section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (section 18571) and section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New article 2 (section 18571) and section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

Article 3. Eligible Local Public Agencies and Eligible Projects

§ 18572. Eligible Local Public Agencies.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New article 3 (sections 18572–18573) and section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 18572–18573) and section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New article 3 (sections 18572–18573) and section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18573. Eligible Projects.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115730 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).

4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

Article 4. Selection Process

§ 18574. Allocation of Funds.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New article 4 (sections 18574–18576) and section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 18574–18576) and section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New article 4 (sections 18574–18576) and section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18575. Criteria.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18576. Requests Exceeding Funds.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

Article 5. Grant Amount and Eligible Costs

§ 18577. Grant Amount.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Section 115813, Health and Safety Code.

HISTORY

1. New article 5 (sections 18577–18580) and section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 18577–18580) and section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New article 5 (sections 18577–18580) and section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18578. Eligible Costs.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18579. Ineligible Costs.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115730, 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

§ 18580. Payments.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 115814, Health and Safety Code. Reference: Sections 115810, 115811 and 115813, Health and Safety Code.

HISTORY

1. New section filed 8–10–2000 as an emergency; operative 8–10–2000 (Register 2000, No. 32). A Certificate of Compliance must be transmitted to OAL by 12–8–2000 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12–8–2000 as an emergency; operative 12–8–2000 (Register 2000, No. 49). A Certificate of Compliance must be transmitted to OAL by

4–9–2001 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 15).
4. New section filed 4–11–2001 as an emergency; operative 4–11–2001 (Register 2001, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–9–2001 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 35).

Chapter 8. Used Oil Recycling Program

Article 1. General Provisions and Definitions

§ 18600. Introduction.

For the purposes of this Chapter, both the question and answer in each section have regulatory effect for implementation and enforcement. This Chapter has been adopted by the California Integrated Waste Management Board pursuant to and for the purpose of implementing the California Oil Recycling Enhancement Act, Sections 48600 through 48691 of the Public Resources Code. Nothing in this Chapter is intended to limit the authority of any other state or local agency in its proper exercise of regulatory authority over oil manufacturers, used oil haulers, or used oil recycling facilities.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48600, 48630 and 48680, Public Resources Code.

HISTORY

1. New chapter 8 (sections 18600–18675, not consecutive, articles 1–7) filed 10–23–78; effective thirtieth day thereafter (Register 78, No. 43).
2. Repealer of chapter 8 (articles 1–7, sections 18600–18675, not consecutive) and new chapter 8 (articles 1–6, sections 18600–18654, not consecutive) filed 12–22–83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 1).

The reorganization of Chapter 8 is being printed as a repealer and adoption for clarity.

3. Repealer and new section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18601. Definitions.

(a) In addition to the definitions provided in the Public Resources Code, the following definitions shall apply whenever the terms are used in this Chapter.

(1) "Act" means the California Oil Recycling Enhancement Act as described in Division 30, Part 7, Chapter 4 of the Public Resources Code.

(2) "Annual report" means a report that is submitted to the Board by each grant recipient beginning on the first January 1 after receiving a block grant and on or before January 1 thereafter for the term of the grant agreement, and as defined in Section 48674 of the Public Resources Code.

(3) "Anonymously donated" means delivered to a used oil collection center under circumstances which prevent identification of the generator, such as delivery after hours.

(4) "Block grant" means an award of funds from the California Used Oil Recycling Fund to a local agency which is based on the evaluation of an applicant's used oil collection program submitted pursuant to Section 48690 of the Public Resources Code.

(5) "Block grant account" means monies available for block grants to local governments as described in Section 48653(a)(4) of the Public Resources Code.

(6) "Board" means the California Integrated Waste Management Board.

(7) "CIWMB Oil manufacturer registration number" means the registration number provided by the Board or its designee to all oil manufacturers. All oil manufacturers must obtain a registration number from the Board prior to submitting reports to the Board.

(8) "Curbside collection program" means a service which collects used oil from households on a monthly or more regular basis, and which may collect other recyclable materials, including but not limited to newspaper, glass containers, aluminum cans, and bi–metals.

(9) "Department" means the Department of Toxic Substances Control.

(10) "Fee" means the $0.16 per gallon fee that oil manufacturers must pay to the Board for each gallon of lubricating oil sold, pursuant to Section 48650(a) of the Public Resources Code.

(11) "Fiscal Year" means the year commencing on July 1 and ending on June 30 of each year.

(12) "Generator" means any entity which generates used oil or causes a used oil hauler to transport such oil.

(13) "Generator category" includes:

(A) Collection station (i.e., service station, shop, garage, recycling center, curbside recycling operation)

(B) Industrial source

(C) Marine source

(D) Agricultural source

(E) Governmental source

(F) Outside California

(G) Other Haulers

(14) "Grant Agreement" means the written document, and any amendment(s) and written change orders thereto, which is signed by the Board or by its designated representative and the grant recipient, which defines the terms, provisions and conditions governing a block grant.

(15) "Grant Recipient" means the local agency which receives a block grant from the Board.

(16) "Grant Year" means the time period in which the grant application submittal, evaluation, selection, and award distribution will occur. The time period will begin on the first day of July in one year and end on June 30 of the next calendar year.

(17) "Incentive claim/report" means the formal request for payment of incentive fees on used lubricating oil either used to generate electricity by an electric utility, or transported by a used oil hauler to a certified used oil recycling facility or to an out–of–state facility registered with the U.S. EPA and in compliance with the regulations of the state in which the facility is located. The incentive claim/report is designed to satisfy the report requirements described in Public Resources Code Section 48670.

(18) "Industrial oil", as it is defined in Public Resources Code, Section 48616, includes, but is not limited to, any compressor, turbine, or bearing oil, hydraulic oil, metal–working oil, or refrigeration oil. Industrial oil does not include di–electric fluids.

(19) "Internal combustion engine" includes engines powered by gasoline, methanol, alcohol fuels, diesel, compressed natural gas, propane or butane.

(20) "Local agency" means a public entity which is a city, county, or district, or any political subdivision but not the State.

(21) "Lubricating oil", as it is defined in Public Resources Code, Section 48618, includes any oil which is intended for use in machinery powered by an internal combustion engine. Lubricating oil includes oil intended for use in an internal combustion engine crankcase, transmission, gearbox, or differential in an automobile, bus, truck, vessel, plane, train, heavy equipment, or other machinery powered by an internal combustion engine. Lubricating oil also includes consumer additives which are intended to be mixed with lubricating oils in an internal combustion engine and synthetic lubricating oils. Lubricating oil does not include oil intended for use in a 2–cycle engine where the oil is entirely consumed during usage.

(22) "Manifest" means a uniform hazardous waste manifest as defined in Section 25160 of the Health and Safety Code, which is hereby incorporated by reference.

(23) "Modified Manifest Receipt" means the receipt completed for each generator and attached to the manifest pursuant to Section

25250.8(b)(3) of the Health and Safety Code, which is hereby incorporated by reference.

(24) "Must" means a provision is mandatory.

(25) "Oil manufacturer" as it is defined in Section 48619 of the Public Resources Code, means the first person or entity in California to take title to lubricating or industrial oil for sale, use or transfer in California. For purposes of this chapter a person or entity who first takes title to lubricating or industrial oil from an out–of–state entity, for purposes of sale or distribution, is the oil manufacturer.

(26) "Operator" means the person or entity responsible for the handling and collection of used oil at a certified used oil collection center, curbside collection program, private business, state or local governmental agency, nonprofit organization, or electric utility.

(27) "Patron" means the person or entity delivering used oil to a certified collection center for storage and transportation to a recycling facility.

(28) "Quarter" means a three month period during a calendar year. For each year, the first quarter commences January 1 and ends March 31, the second quarter commences April 1 and ends June 30, the third quarter commences July 1 and ends September 30, and the fourth quarter commences October 1 and ends December 31, all inclusive.

(29) "Recycling Incentive" means the amount the Board pays for each quart of lubricating oil recycled, to every industrial generator, curbside collection program, certified used oil collection center, or electric utility pursuant to Sections 48651(a) and (b) of the Public Resources Code.

(30) "Regional" means any geographic area which includes two or more local agencies.

(31) "Used lubricating oil generated by a certified used oil collection center" means used lubricating oil generated on–site by the certified used oil collection center. It does not include used oil generated by an entity other than the center, except used oil delivered by the public in quantities of no more than 20 gallons per person per day.

(32) "Used oil collection program" means a program undertaken by a local agency to encourage the collection, recycling, and proper disposal of used oil generated at households. A used oil collection program includes but is not limited to, integration of used oil collection into an existing curbside collecting program, household hazardous waste program, and a public education and awareness program to promote opportunities for, and to educate the public as to the benefits from, recycling of used oil.

(33) "Used oil storage facility" means a hazardous waste facility which stores used oil, as defined in Section 25123.3(a) of the Health and Safety Code.

(34) "Used oil transfer facility" means a hazardous waste transfer facility that either stores used oil for periods greater than 144 hours, or that transfers used oil from one container to another as defined in Section 25123.3(c) of the Health and Safety Code.

(35) "U.S. EPA" means the United States Environmental Protection Agency.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48601, 48616, 48618, 48619, 48651, 48660, 48670, 48674, 48690 and 48691, Public Resources Code.

HISTORY

1. Repealer and new section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Amendment of section and NOTE filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment of subsections (a)(5)(G) and (H), (a)(12) and (a)(15)–(16) transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).
4. Editorial correction amending subsection (a)(12) and HISTORY 3 (Register 93, No. 28).
5. Certificate of Compliance as to 1–21–93 order including repealer and new subsection (a)(3), amendment of subsections (a)(7) and (a)(15), new subsection (a)(30) and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
6. Amendment of section and NOTE filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

Article 2. General Recordkeeping Requirements

§ 18610. Scope and Applicability.

The regulations contained in this Article set forth recordkeeping requirements with which oil manufacturers, used oil haulers, and operators of used oil recycling facilities must comply.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48631(d), 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New article heading and section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18611. Will the Board Examine My Books and Records to Determine Whether I Comply with These Regulations?

(a) Yes. The Board, or persons authorized by the Board, may conduct examinations of the books and records of oil manufacturers, used oil haulers, and operators of used oil recycling facilities, for the purposes of determining compliance with the provisions of the Act. Nothing herein

[The next page is 806.71.]

shall limit the authority of the Board pursuant to the Act to audit, examine, review, inspect, or otherwise determine the compliance of any person with the Act.

(b) An examination is a review or inspection of any books or records or other documentation of sales or transfers of new or used lubricating or industrial oil. Such reviews may include verification of measurements or procedures regarding reporting, payments and other activities related to the Act.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48657, 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. Repealer of article heading and section and new section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18612. Are the Reports and Information that I Submit to the Board Public Documents?

(a) All information obtained by the Board, or persons authorized by the Board may be disclosed to the public upon request, unless the information is exempt from disclosure pursuant to the Act, the Public Records Act (Government Code Section 6250 et seq.), or other applicable law. Information exempt from public disclosure may include, but is not limited to, proprietary information concerning specific sales or purchases of new or used lubricating or industrial oil; market reports; personal financial data; and trade secrets which the reporter has requested not be publicly disclosed.

(b) If you believe that any information submitted to the Board is a trade secret, you must identify this information at the time of submission. Any information not identified by you as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law.

(c) Regarding trade secrets, the Board shall determine whether any or all of the information has been properly identified as a trade secret.

(d) Upon receipt of a written request for records pertaining to information obtained by the Board pursuant to this Chapter, the Board shall determine whether the requested information is exempt from disclosure.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48675, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18613. Articles 3, 4, and 5 of this Chapter Describe Specific Records that I Must Maintain. How Must I Maintain These Records?

Any records which you are required to maintain pursuant to this Chapter or the Act must be kept in accordance with the following provisions:

(a) You must give the Board notice of the location of your records on or before November 30, 1992. Notice of any change in location, or intent to establish a new location of such records, must be provided no less than 10 days prior to any change in location or establishment of a new location. Notice shall mean written notice stating the name of the business entity, the complete present and potential future addresses of the location of the records, if applicable, and the names and telephone numbers of the individuals responsible for such records.

(b) Oil manufacturers must maintain records for at least four years. Used oil haulers and used oil recycling facilities must maintain records for at least three years.

(c) All records maintained pursuant to this Chapter must include the books of account that are ordinarily maintained by the average prudent businessperson engaged in the same activity, together with all bills, receipts, invoices, manifests, cash register tapes, or other documents of original entry supporting the entries in the books of account. An Automatic Data Processing (ADP) system must have built into its program a method of producing visible and legible records which will provide the necessary information to determine compliance with the requirements of this Chapter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48657, 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18614. Articles 3, 4, and 5 of this Chapter Contain Specific Reporting Requirements. How Do I Submit Reports, Notices, and Applicable Supporting Documents to the Board?

(a) Except where specifically provided otherwise, any reports and notices must be prepared and submitted in the form designated by the Board. Oil manufacturer reports must include the information specified in Section 18622 of this Chapter. Used oil hauler reports must include the information specified in Section 18634 of this Chapter. Operators of used oil recycling facilities must include the information specified in section 18642 of this Chapter. Only notices and reports containing such information and bearing an original signature pursuant to (c)(4), below, will be acceptable.

(b) Reports, notices, and applicable supporting data must be accurate, complete, and typed or legibly handwritten in English.

(c) All reports to the Board must contain all of the following information:

(1) The full name, address, and identification number of the person preparing the report;

(A) For used oil hauler and used oil recycling facility reports, the identification number will be the U.S. EPA Identification number.

(B) For oil manufacturer reports, the identification number will be the Oil Recycler Fee Permit Number as issued by the Board or its representative.

(C) If an entity preparing the report has no EPA Identification number or Oil Recycler Fee Permit Number, an identification number must be obtained from the Board upon written request.

(2) The name and telephone number of a contact person for purposes of the report;

(3) The reporting period, if applicable, and date of preparation of the report;

(4) The signature and title of the representative of the entity authorized to prepare the report. The signature block must state that the information ion the report is correct to the best knowledge and belief of the person submitting the report;

(5) The date of signing of the report.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18614.1. What If My Report Does Not Contain All of the Information Required by Section 18614 of this Article?

The Board will reject your report if it fails to comply with the reporting requirements of Section 18614. Any such rejection shall not extend any applicable due date or time period.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18615. When are Reports Due to the Board?

Report due dates are discussed in this Chapter as follows: in Section 18622 for oil manufacturers, Section 18634 for used oil haulers, and Section 18642 for used oil recycling facilities.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a), 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18616. On What Date is a Report, Complaint, Payment, Notice or Other Information Considered to be Submitted to the Board?

Reports, complaints, payments, notices and other information will be considered submitted to the Board on the postmarked date if deemed complete by the Board.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a), 48671, 48672 and 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order with amendment transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

Article 2.1. Recordkeeping, Auditing, and Administrative Actions for Entities Claiming Recycling Incentives

§ 18619.1. Scope and Applicability.

The regulations contained in this Article set forth recordkeeping requirements with which certified used oil collection centers, industrial generators, curbside collection programs, and electric utilities wishing to claim recycling incentives must comply.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48631(d), 48660, 48670 and 48680, Public Resources Code.

HISTORY

1. New article 2.1 (sections 18619.1–.5) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18619.2. Will The Board Examine My Books, Records, and Operations to Determine Whether I Am in Compliance With The Program Requirements?

(a) Yes. An operator of a certified or registered program shall provide access to the Board or persons authorized by the Board for any one or all of the following purposes:

(1) To determine compliance with the provisions of the Act and this Chapter;

(2) To determine the accuracy of any information provided to the Board;

(3) For the investigation of complaints related to compliance with the provisions of the Act and this Chapter; or

(4) To inspect any records required by the Act or this Chapter.

(b) An applicant for certification or registration shall provide access to the Board or persons authorized by the Board for the purposes listed in subparts (a)(1), (a)(2), and (a)(4) of this Section.

(c) Failure to provide access, as required, may result in one or more of the following:

(1) Denial of a pending application;

(2) Cancellation of a certification or registration, or denial of a recertification request;

(3) Legal actions pursuant to Public Resources Code Section 48680;

(4) Recoupment of monies previously paid by the Board, which were the subject of the inspection; or

(5) Rejection of incentive claims made to the Board.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48631(d), 48660, 48670 and 48680, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18619.3. How Must Records Be Maintained to Satisfy The Requirements of This Chapter?

(a) Any records which you are required to maintain pursuant to this Chapter or the Act must be kept in accordance with the following provisions:

(1) You must give the Board notice of the location of your records on or before April 1, 1993, or upon certification or registration pursuant to Articles 6 and 6.1 of this Chapter, respectively. "Notice" of any change in location, or intent to establish a new location of such records, must be provided no less than ten (10) days prior to any change in location or establishment of a new location. "Notice" shall mean a written notice stating the name of the business entity, the complete present and potential future addresses of the location of the records, if applicable, and the names and telephone numbers of the individual(s) responsible for such records.

(2) Records must be retained for at least three years.

(3) All records maintained pursuant to this Chapter must include the books of account that are ordinarily maintained by the average prudent businessperson engaged in the same activity, together with all bills, receipts, invoices, manifests, cash register tapes, or other documents of original entry supporting the entries in the books of account. If records are maintained in an Automatic Data Processing (ADP) system, it must have built into its program a method of producing visible and legible records which will provide the necessary information to determine compliance with the requirements of this Chapter.

(4) All records maintained pursuant to this Chapter shall be suitable for examination. Records satisfy this standard when they are prepared and retained in accordance with generally accepted accounting principles and good business practice.

NOTE: Authority cited: Sections 40502 and 48651, Public Resources Code. Reference: Sections 48631(d), 48660, 48670 and 48680, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18619.4. Are the Reports and Information That I Submit to the Board Public Documents?

(a) All information obtained by the Board, or persons authorized by the Board, may be disclosed to the public upon request, unless the information is exempt from disclosure pursuant to the Act, the Public Records Act (Government Code Section 2650 et. seq.), or another applicable law. Information exempt from public disclosure may include, but is not limited to: proprietary information concerning specific sales or purchases of new or used lubricating or industrial oil; market reports; personal financial data; and trade secrets, as defined in the Public Resource Code, which the reporter has requested not be publicly disclosed.

(b) If you believe that any information submitted to the Board is a trade secret, you must identify this information at the time of submission. Any information not identified by you as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law.

(c) Regarding trade secrets, the Board shall determine whether any or all of the information has been properly identified as a trade secret.

(d) Upon receipt of a written request for records pertaining to information obtained by the Board pursuant to this Chapter, the Board shall determine whether the requested information is exempt from disclosure.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48675, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18619.5. What Happens If My Certified or Registered Used Oil Collection Program Is Not In Compliance With the Requirements of the Act or of This Chapter?

Violations of the Act or any regulation contained in this Chapter may be subject to the provisions of Section 48680 of the Public Resources Code.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48631(d), 48660 and 48680, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

Article 3. Oil Manufacturers

§ 18620. Applicability.

In addition to the general requirements of this Chapter, oil manufacturers must comply with the provisions of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48671, Public Resources Code.

HISTORY

1. New article heading and section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18621. As an Oil Manufacturer, What Records Am I Required to Maintain?

Beginning May 1, 1992, you must maintain records of all industrial oil sold in California and all lubricating oil sold in California which is not exempt from payment of the fee pursuant to Section 48650 of the Public Resources Code. Records must include:

(a) the amount, in gallons, of lubricating oil sold monthly;

(b) the amount, in gallons, of industrial oil sold monthly.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48671, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18622. As an Oil Manufacturer, What Reports Must I Submit to the Board?

All oil manufacturers must prepare and submit to the Board a report in accordance with the general requirements for reporting contained in section 18614 of this Chapter.

(a) You must submit a report for the period between May 1, 1992, and September 30, 1992, which includes:

(1) the amount, in gallons, of lubricating oil sold monthly in California;

(2) the amount, in gallons, of industrial oil sold monthly in California. This report is due to the Board by January 31, 1993.

(b) For the quarter beginning October 1, 1992, and each following quarter, you must submit reports which include:

(1) the amount, in gallons, of lubricating oil sold monthly in California;

(2) the amount, in gallons, of industrial oil sold monthly in California;

(3) the total amount of fees due pursuant to Section 48650 of the Public Resources Code.

(A) you must calculate the total amount of fees due by multiplying the number of gallons of lubricating oil sold during the quarter by $0.16 per gallon.

Reports must be submitted to the Board on or before the last day of the month following each quarter, as defined in Section 18601 of this Chapter. For example, lubricating oil sold during the quarter commencing October 1 and ending December 31 must be reported by January 31.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a) and (b) and 48671, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment of subsections (a)(2) and (b) transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18623. What Date is Considered the Date of Sale?

The date of sale of lubricating or industrial oil is the date of receipt by the purchaser, as evidenced by an invoice.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a) and (b), Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18624. How Should Payments be Made to the Board and When Are They Due?

(a) All payments made pursuant to Sections 48650(a) and (b) of the Public Resources Code must accompany the report submitted pursuant to Section 18622 of this Chapter. Payments received after the due date of this report shall be deemed late.

(b) All payments must be reported and recorded in currency of the United States of America ("U.S. dollars"). All payments to the Board must be made in U.S. dollars and made by either check, draft, money order or cashier's check payable to the State of California, Integrated Waste Management Board or an entity designated by the Board to collect payments.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a) and (b) and 48671, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18625. How Do I Notify Those Who Purchase Lubricating Oil From Me That the Fee Has Been Paid?

You must inform your customers that the fee has been paid by one of the following methods:

(a) A sales invoice or a contract which clearly states that the fee is included in the invoiced or contracted amount;

(b) Documentation showing that the fee has been paid to the Board.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48650(a) and (b), Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

Article 3.1. Exemptions

§ 18626. Exemption Certificates.

(a) Scope and Applicability. All sales or transfers of lubricating oil in the state by an oil manufacturer are subject to the oil recycling fee unless exempted.

(b) Exemption from Responsibility for the Oil Recycling Program Fee. A seller is exempt from responsibility for the oil recycling fee when the purchaser certifies in writing, in a timely manner, to the seller that the lubricating oil purchased will be used in an exempt manner as provided in PRC section 48650. To be considered timely, an exemption certificate shall be given:

(1) At any time before the seller bills the purchaser for the lubricating oil; or

(2) At any time within the seller's normal billing and payment cycle; or

(3) Any time at or prior to delivery of the subject oil to the purchaser.

Exemption certificates are valid until there is a change in the use of the oil as described in the certificate. The purchaser is responsible for submitting a revised exemption certificate prior to any change in use of the oil purchased.

(c) Liability for the Fee for Other Uses If a purchaser certifies in writing to a seller that the lubricating oil purchased will be used in an exempt manner, as provided in PRC section 48650(b), and instead uses the lubricating oil in some manner which is not exempt, the purchaser shall be liable for payment of the oil recycling fee as if the purchaser were the first person or entity to take title to the lubricating oil for sale, use, or transfer in this state. The fee will apply at the time of the sale, use or transfer by the purchaser.

(d) Form of Exemption Certificates.

(1) All purchasers qualifying for an exemption must provide certification as follows:

(A) the name and address of the purchaser;

(B) the purchaser's CIWMB oil manufacturer registration number;

(i) if the purchaser is not required to hold an oil manufacturer registration number, a statement to that effect and the reasons;

(C) a description of the lubricating oil purchases associated with the certificate, including the number of gallons;

(D) a statement describing the exempt use of the lubricating oil pursuant to the exemptions described in PRC section 48650(b);

(E) date;

(F) signature of the purchaser.

(2) Submission to the Board of form CIWMB 36 "State of California Oil Recycling Program Fee Exemption Certificate" (rev. 11/94), which is incorporated herein by reference, will satisfy the requirements of part d(1), above. (See Appendix A.)

(e) "Qualified" Fee Exemption Certificates. Purchasers may issue "Qualified" Fee Exemption Certificates if a portion of the total oil purchased is to be used in an exempt manner. In these cases, the CIWMB Fee Exemption Certificate Form Number 36 (rev. 11/94) requires that a purchase order be attached. Each purchase order must indicate that the oil is purchased for exempt use. If a purchase order does not so specify, it will be presumed that the oil purchased is to be used in a nonexempt manner, and is subject to the fee.

(f) Untimely Exemption Certificates. An exemption certificate which is not issued in a timely manner is not retroactive, and will not relieve the seller of the responsibility for the fee, unless the seller presents satisfactory evidence that (1) the specific oil was used in an exempt manner or (2) that the fee was paid to the state by the purchaser.

(g) Good Faith. A seller will be presumed to have been issued a certificate in good faith in the absence of evidence to the contrary. A seller will not be relieved of the responsibility for the oil recycling fee if it knew, or should have known, that the lubricating oil would not be used by the purchaser in an exempt manner.

(h) Penalties for Improper Use of an Exemption Certificate. Civil penalties, as described in Public Resources Code (PRC) section 48680, may be assessed if there is unauthorized issuance or use of an Exemption Certificate.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650 and 48680, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. Renumbering of former section 18626 to section 18626.99 and new article 3.1, section and CIWMB form 36 filed 6–16–95; operative 7–17–95 (Register 95, No. 24).
3. Change without regulatory effect amending subsection (d)(2) and moving form to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18626.99. Certificate of Registration.

NOTE: Authority cited: Section 3470(b), Public Resources Code. Reference: Sections 3470(b) and (c), Public Resources Code.

HISTORY

1. Renumbering of former section 18626 to section 18626.99 filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18627. Refund of Lubricating Oil Payment.

Any person who has made the lubricating oil payment on oil which is later sold or used for an exempt purpose pursuant to PRC section 48650, may request a refund. For this chapter, an exempt purpose shall include lubricating oil that is subsequently sold to an agency of the Federal Government and on which the payment was not made by that agency. The request for a refund must include the information in Section 18613 of this chapter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48650(a) and (b), 48671 and 48680, Public Resources Code.

HISTORY

1. Change without regulatory effect adding section filed 3–13–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 11).

Article 4. Used Oil Haulers

§ 18630. Scope and Applicability.

In addition to the general requirements of Article 2 of this Chapter, used oil haulers must comply with the provisions of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48672, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New article heading and section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment of article heading transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18631. As a Used Oil Hauler, What Records Am I Required to Maintain?

You must keep all manifests and modified manifest receipts as described in Section 25250.8 of the Health and Safety Code and Section 66263.22 of Title 22 of the California Code of Regulations. These documents must be made available to the Board for examination pursuant to Section 18611 of this Chapter. These records must be maintained in accordance with the general requirements set forth in Section 18613 of this Chapter, in addition to any recordkeeping requirements of the Department of Toxic Substances Control.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48672, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18632. What Specific Information Am I Required to Include on Each Modified Manifest Receipt?

In addition to the information required by Section 25250.8 of the Health and Safety Code, you must include the following information on each modified manifest receipt:

(a) the generator category of the entity generating the used oil, as defined in Section 18601 of this Chapter;

(b) an estimate of the amount, in gallons, of lubricating oil and the amount, in gallons, of industrial oil collected from the generator.

(1) To obtain an estimate, you must ask each generator to provide an approximation of the amount of used lubricating oil and the amount of used industrial oil being collected.

(2) If the generator fails to provide you with an estimate of the amount of lubricating versus industrial oil, you must use your best judgment to provide an estimate based upon your knowledge, if any, of the types of machinery used by the generator.

(3) You will not be held liable for the accuracy of estimates made pursuant to (1) and (2), above.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48672, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18633. Am I Required to Provide Any Specific Information to the Recipients of the Used Oil I Deliver?

Yes. Used oil haulers must provide the recipients of their used oil (i.e., a used oil transfer facility, a used oil storage facility, or a used oil recycling facility) with either:

(a) a receipt containing the following information for each delivery:

(1) the manifest number;

(2) an estimate of the amount, in gallons, of lubricating oil and the amount, in gallons, of industrial oil contained in the delivery; or

(b) an estimate in box 11 or box 15 of the Uniform Hazardous Waste Manifest, of the amount, in gallons, of lubricating oil and the amount, in gallons, of industrial oil contained in the delivery.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48672 and 48673, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment of subsections (a) and (b) transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18634. As a Used Oil Hauler, What Reports Must I Submit to the Board?

All used oil haulers must prepare and submit to the Board a report in accordance with the general requirements for reporting contained in Section 18614 of this Chapter.

(a) All reports must be submitted to the Board no later than 10 days after the end of each quarter, as defined in section 18601 of this Chapter. For example, used oil transported during the quarter commencing July 1 and ending September 30 must be reported by October 31, and used oil transported during the quarter commencing October 1 and ending December 31 must be reported by January 31.

(b) Reports must contain all of the following information for the used oil that you collected during the reporting period:

(1) an estimate, by generator category, of the total amount, in gallons, of lubricating oil collected and transported;

(2) an estimate, by generator category, of the total amount, in gallons, of industrial oil collected and transported;

(3) the sum total, in gallons, of all used lubricating and industrial oil collected and transported;

(4) if you are also the operator of a used oil transfer facility or a used oil storage facility, indicate the amount of used oil included in this report which was, or will be, to the best of your knowledge, reported to the Board by another hauler;

(5) a listing of all the locations to which you transported used oil during the reporting period, including used oil transfer facilities, used oil storage facilities, and used oil recycling facilities. For each location, you must specify the name of the entity, the street address, the mailing address, the telephone number, and the U.S. EPA Identification Number.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48672, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order with amendment of subsection (a) transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

Article 5. Used Oil Recycling Facilities

§ 18640. Scope and Applicability.

In addition to the general requirements of Article 2 of this Chapter, used oil recycling facilities, as defined in Section 48624 of the Public Resources Code, shall comply with the provisions of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48624, 48662 and 48673, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New article heading and section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).
5. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18641. As the Operator of a Used Oil Recycling Facility, What Records Am I Required to Maintain?

You must maintain the following records in accordance with the general requirements set forth in Section 18613 of this Chapter.

(a) Manifests, maintained pursuant to Section 66264.71(a)(6) of Title 22 of the California Code of Regulations, must be made available for examination pursuant to Section 18611 of this Chapter.

(b) For each delivery received, you must estimate the amount, in gallons, which is used lubricating oil and the amount which is used industrial oil. You may obtain an estimate of these amounts from the used oil hauler delivering the used oil pursuant to Section 18633 of this Chapter.

(c) You must maintain records of the amount of used oil processed at your facility. These records must include:

(1) the amount, in gallons, of recycled oil produced. For purposes of this section, recycled oil includes used oil which is prepared for reuse, as it is defined in the Section 25250.1 of the Health and Safety Code, including used oil which is:

(A) re–refined as motor vehicle oil;

(B) re–refined as industrial oil;

(C) processed into fuel oil;

(D) processed into asphalt;

(E) consumed in the process of preparing it for reuse, including being burned for energy recovery;

(2) the amount, in gallons, of used oil transferred to another facility for processing or treatment;

(3) the amount, in gallons, of residual material produced.

For purposes of this section, residual material includes constituents of the used oil which remain after processing, including those:

(A) produced as a nonhazardous waste (e.g., water);

(B) produced as a hazardous waste;

(C) other.

If "other" is indicated, you must indicate the specific residual material produced.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48673, Public Resources Code.

HISTORY

1. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8–20–92 order transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18642. As an Operator of a Used Oil Recycling Facility, What Reports Must I Submit to the Board?

(a) You must prepare and submit to the Board a report in accordance with the general requirements for reporting contained in Section 18614 of this Chapter.

(b) All reports must be submitted on or before the last day of the month following each quarter, as defined in section 18601 of this Chapter. For example, used oil received and recycled during the quarter commencing July 1 and ending September 30 must be reported by October 31, and used oil received and recycled during the quarter commencing October 1 and ending December 31 must be reported by January 31.

(c) Your reports must contain all of the following information for the reporting period:

(1) the total amount, in gallons, of used oil received during the reporting period, including:

(A) an estimate of the total amount of lubricating oil received;

(B) an estimate of the total amount of industrial oil received.

(2) the amount of used lubricating and used industrial oil received from:

(A) within California;

(B) outside of California.

If used oil is received from outside of California, the report must include the state or country from which the used oil was received.

(3) the total amount, in gallons, of recycled oil produced by the facility. For purposes of this section, recycled oil includes used oil which is prepared for reuse, as it is defined in the Section 25250.1 of the Health and Safety Code, including used oil which is:

(A) re–refined as motor vehicle oil;

(B) re–refined as industrial oil;

(C) processed into fuel oil;

(D) processed into asphalt;

(E) consumed in the process of preparing it for reuse, including being burned for energy recovery;

(4) the total amount, in gallons, of used oil transferred to another facility for processing or treatment and the name and U.S. EPA Identification number of each facility;

(5) the total amount, in gallons, of residual material produced. For purposes of this section, residual material includes constituents of the used oil which remain after processing, including those:

(A) produced as a nonhazardous waste (e.g., water);

(B) produced as a hazardous waste;

(C) other.

If "other" is indicated, you must indicate the specific residual material produced.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48673, Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).
2. New section filed 8–20–92 as an emergency; operative 8–20–92 (Register 92, No. 34). A Certificate of Compliance must be transmitted to OAL 12–18–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–20–92 order with amendment of subsection (b) transmitted to OAL 12–17–92 and filed 2–2–93 (Register 93, No. 6).

§ 18643. Records of Transaction.

NOTE: Authority cited: Section 3470(b), Public Resources Code. Reference: Section 3468(b), Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).

§ 18643.0. Who May Become a Certified Used Oil Recycling Facility?

The Board shall consider certifying any used oil recycling facility in California, as defined in Section 48624 of the Public Resources Code.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48624 and 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Editorial correction adding HISTORY 2 (Register 95, No. 19).

§ 18643.1. Why Should I Become a Certified Used Oil Recycling Facility?

It is necessary for used oil recycling facilities to become certified because recycling incentives can only be paid to certified used oil collection centers, industrial generators, or curbside collection programs that transport used oil to certified used oil recycling facilities or to an out of state recycling facility as described in Section 48651 of the Public Resources Code. Industrial oil must also be hauled to certified used oil recycling facilities.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.2. As An Operator of a Used Oil Recycling Facility, Must I Apply For Certification/Recertification of the Facility?

No. Once the Board receives a report from the Department following the annual inspection of your facility, the Board initiates the certification/recertification process for your facility.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.3. How Does The Board Certify or Recertify a Used Oil Recycling Facility?

(a) Following the annual inspection of a used oil recycling facility pursuant to Section 48661 of the Public Resources Code, the Department forwards an inspection report of the facility to the Board.

(b) Within a minimum of six (6), a median of eight (8), and a maximum of ten (10) working days of receipt of an inspection report for a used oil recycling facility, the Board notifies the operator of the facility in writing that its certification/recertification is being processed.

(c) Within a minimum of twenty–five (25), a median of thirty–five (35), and a maximum of forty–five (45) working days of receipt of the

above described inspection report, the Board notifies the operator of the facility in writing that its certification is either:

(1) Approved; or

(2) Denied, and the reasons for denial.

Denial may occur when a facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment. Such a pattern may include violations as described in Public Resources Code Sections 48661 (b) and (c).

(d) If a certification is approved, the Board sends a certificate to the operator of the facility.

(e) In case of denial, the operator of the facility may submit a written request for a Board hearing.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (b), (c), (c)(2) and (e) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.4. As an Operator of a Used Oil Recycling Facility, What Should I Do With the Certificate That the Board Issues to Me?

(a) The certificate shall be kept on file at the used oil recycling facility. An operator may request that the certificate be kept on file at another location, and the Board may grant approval of such request when the request is submitted in writing and the following conditions are met:

(1) A copy of the certificate with a statement indicating where the original certificate is maintained is kept at the recycling facility; and

(2) The original certificate is maintained at the main business office of the operator where records and reports meeting the requirements of Article 5 of these regulations are maintained.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.5. How Long Is a Certificate Valid?

(a) A certificate is valid until such time that it is surrendered by the operator, or recertification is denied pursuant to Section 18643.3 of this Article.

(b) A certificate does not expire, and the operator of a used oil recycling facility is not required to submit an application for recertification. Upon receipt of the annual inspection report from the Department, the Board automatically initiates the certification/recertification process for a facility. However, upon evaluating the annual inspection report, the Board may either certify/recertify a used oil recycling facility or deny its certification/recertification pursuant to Section 18643.3 of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.6. Is the Certificate Transferrable?

No. The certificate is neither transferrable nor assignable to any other person. It is issued to a specific operator of a used oil recycling facility for a specific location. The operator of a used oil recycling facility must notify the Board in writing of any change in the operator, location of the facility, or cessation of facility operation. The notification shall be submitted to the Board within sixty (60) calendar days of the change occurring.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18643.7. Is There a List of Certified Used Oil Recycling Facilities Available?

(a) Yes. The Board maintains a current list of certified used oil recycling facilities. The list is available to the public upon request.

(b) The Board also maintains a current list of used oil recycling facilities whose certifications were denied by the Board. This list is also available to the public upon request.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48662, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18644. Annual Report.

NOTE: Authority cited: Section 3470(b), Public Resources Code. Reference: Section 3468(c), Public Resources Code.

HISTORY

1. Repealer filed 12–21–88; operative 1–20–89 (Register 89, No. 1).

Article 6.0. Used Oil Collection Center Certification and Operation Standards

§ 18650.0. Scope and Applicability.

Any person wishing to have a used oil collection center certified by the Board, pursuant to Section 48660 of the Public Resources Code, must comply with the provisions of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New article 6.0 (sections 18650.0–18651.9) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18650.1. Who May Apply for Certification?

Any operator or proposed operator of a used oil collection center is eligible to apply for certification from the Board. Application for certification of a used oil collection center is optional and is not required by the Act or this Chapter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of sections transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18650.2. How Do I Apply for Certification?

(a) A separate, complete application containing the information requested in Section 18650.3, below, for each used oil collection center must be submitted to the Board when requesting certification.

(b) The filing period for applications is continuous.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

History

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18650.3. What Information Am I Required to Provide in the Application for Certification?

(a) To be considered complete, applications shall contain the following information:

(1) A request for either initial certification, or recertification.

(A) If the application is for recertification, it shall include only that information which has changed since the last application for certification was submitted to the Board.

(2) The name, street and mailing address, and phone number (if applicable) of the used oil collection center, and, if different, of the operator.

(3) The type of organization which the operator represents.

(A) If the organization is an individual business doing or proposing to do business under a different name, the applicant shall provide a copy of the fictitious business name statement.

(B) If the organization is a partnership, the applicant shall provide a copy of the current partnership agreement.

(C) If the organization is a corporation, the applicant shall provide the corporate number as assigned by the Secretary of State.

(D) If the organization is a husband and wife co–ownership, the application shall contain both names.

(E) If the organization is a local government agency, the applicant shall provide a copy of either an authorizing letter or a resolution from the governing board.

(F) If the operation is a private, nonprofit program, the applicant shall provide verification of nonprofit status. Any one of the following will constitute verification:

1. A copy of a letter from the Federal Internal Revenue Service confirming tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code; or
2. A copy of a letter from the State of California Franchise Tax Board confirming tax exempt status pursuant to Section 23701(d) of the Revenue and Taxation Code; or
3. A corporate number as assigned by the Secretary of State.

(4) The federal identification number (employer ID number) of the organization.

(5) A description of the physical location of the facility in relation to the nearest cross street.

(6) If it is a proposed operation, the specific date the center intends to begin accepting used oil from the public at no charge and offering the recycling incentive.

(7) If it is an existing facility, the specific date the center began accepting used oil from the public at no charge and offering the recycling incentive.

(8) The actual days and hours the used oil collection centers is, or will be, open for business.

(9) The actual days and hours the used oil collection center is, or will be, accepting used oil from the public at no charge and offering the recycling incentive.

(10) If applicable, the hazardous waste generator identification number assigned by either the Department of Toxic Substances Control or the U.S. EPA.

(11) Description of operations conducted at the collection center, if any, in addition to the collection of used oil from the public. Description of other materials collected for disposal and/or recycling at the facility.

(12) Total anticipated or actual used oil storage vessel capacity of all storage vessels on site, in gallons.

(13) If the application is for initial certification, a description of the type and frequency of advertising which will be conducted to comply with Section 18651.4 of this Chapter.

(14) If the application is for recertification, a description of the method and frequency of each type of advertising conducted (since the previous application for certification was submitted) to comply with Section 48660(b)(4) of the Public Resources Code and Section 18651.4 of this Chapter. Whenever possible, an example or facsimile of each advertising event should be included.

(15) An indication whether the proposed operator or owner also operates or owns a used oil hauler business, as defined in Public Resources Code Section 48623, or a used oil recycling facility, as defined in Public Resources Code Section 48624.

(16) Identify the company name or individual and address to whom the Board should pay the recycling incentive.

(17) Any other information the Board determines is necessary to aid in a finding of compliance with Public Resources Code Section 48660(b).

(b) The application shall be signed by the applicant(s) as described below, under penalty of perjury. The signature block shall contain an affidavit stating the following: "I certify, under penalty of perjury, that the information contained in this application is true and correct to the best of my knowledge, and that the facility for which this application is being made is currently in compliance with all Federal, State and local requirements. I certify that the property owner is aware that I am applying to become a certified used oil collection center and will be accepting used oil from the public. I agree to operate in compliance with the requirements of the California Oil Recycling Enhancement Act, and with all related regulatory provisions."

(1) If the operator is a partnership, the application shall be signed by at least one partner with authority to bind the partnership.

(2) If the operator is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the individual with authority to legally bind the entity to a contract.

(3) If the operator is a husband and wife co–ownership, the application shall be signed by both the husband and the wife.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

History

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a)(3)(C)1., (a)(3)(F)1.–3., (b) and (b)(3), repealer of subsections (a)(8)–(a)(8)(C) and subsection renumbering, and new subsection (a)(16) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18650.4. How Does the Board Process an Application for Certification of a Used Oil Collection Center?

(a) The Board issues an identification number to all used oil collection centers upon receipt of an application for initial certification.

(b) All applications for certification are reviewed by the Board for compliance with these regulations and with the Act.

(c) The Board will periodically conduct field investigations to verify the ongoing accuracy of information contained in a certification application.

(d) The Board will notify an applicant in writing within a minimum of six (6), a median of eight (8), and a maximum of ten (10) working days of receipt of the application that it is either:

(1) Complete and correct and accepted for further review; or

(2) Incomplete and rejected and the reason(s) for rejection.

(e) Upon determining that an application is complete and correct, the Board shall notify the applicant in writing within a minimum of twenty–five (25), a median of thirty–five (35), and a maximum of forty–five (45) calendar days that certification is either:

(1) Granted; or

(2) Denied and the reason(s) for denial.

(f) If the Board grants certification, the applicant shall receive the written notice, a certificate, and a certification sign.

(g) If the Board denies certification of a used oil collection center, and the applicant wishes a hearing on such denial, a request for hearing must be made to the Board in writing.

(h) Reasons for denial of certification may include, but are not limited to:

(1) Failure to provide information or documentation to substantiate the application as stipulated in Section 18650.3 of this Chapter;

(2) For recertification:

(A) The used oil collection center's certification history demonstrates a pattern of operation in violation of the requirements of the Act, including any relevant regulations;

(B) The used oil collection center's certification history demonstrates outstanding fines, penalties, or unresolved audit findings.

1. If the certification of a used oil collection center is denied, the applicant can reapply for certification at any time.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (d) and (h)(2)(A)–(h)(2)(B)1. transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (f) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18650.5. May a Person Withdraw an Application for Certification?

Yes. An applicant may withdraw an application from review by the Board. Such withdrawal shall be requested in writing and submitted to the Board. A withdrawal of application does not prohibit the operator of a used oil collection center from reapplying at a later date.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18650.6. As the Operator of a Certified Used Oil Collection Center, Might There Ever be an Occasion When I Will Need to Submit a New Application?

(a) Yes. An operator shall be required to file a new application with the Board in accordance with the requirements of this Chapter when any of the following conditions occur:

(1) A change in the location of the certified used oil collection center; or

(2) A change in the operator of the certified used oil collection center; or

(3) Expiration of the certificate pursuant to Section 18650.8 of this Article.

(b) Because a certificate is not transferrable (see Section 18650.9 of this Article, an application for initial certification must be submitted whenever there is a change in the location or operator of a certified used oil collection center.

(c) An application for initial certification or recertification shall be submitted at least sixty (60) calendar days prior to any of the events listed in (a) above to avoid any loss of incentive payments.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsection (a)(1) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (c) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18650.61. As the Operator of a Certified Used Oil Collection Center, What Should I Do if I Decide to Cease Collection Center Operations?

You should notify the Board, in writing, of your intention to cease collection center operations a minimum of thirty (30) days prior to cessation of operation. This written notice should indicate the date the collection center will cease accepting used lubricating oil from the public. Within thirty (30) days of cessation of operation, you must return your certificate and certification sign (if issued by the Board) to the Board.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 7–6–93; operative 7–6–93 (Register 93, No. 28).

§ 18650.7. What Should I Do with the Certificate Once I Have Received It?

(a) The certificate shall be kept on file at the used oil collection center. An operator may request that the certificate be kept on file at another location, and the Board may grant approval of such request when the request is submitted in writing and the following conditions are met:

(1) A copy of the certificate with a statement indicating where the original certificate is maintained is kept at the used oil collection center; and

(2) The original certificate is maintained at the main business office of the operator where records and reports meeting the requirements of this Chapter are maintained.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Editorial correction deleting duplicate, misplaced HISTORY 2 (Register 96, No. 16).

§ 18650.8. When Does My Certificate Expire?

A certificate shall be valid for two (2) years from the date certification is approved by the Board, or until such time as it is voluntarily surrendered by the operator, denied pursuant to Section 18650.4 of this Chapter, or canceled by the Board pursuant to Section 48660(a) of the Public Resources Code.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18650.9. Is a Certificate Transferrable or Assignable?

No. The certificate is issued to a specific used oil collection center operator for a specific location and is neither transferrable nor assignable to any other person.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18651.0. What Must I Do with a Certificate Sign Once I Have Received It?

(a) All certified used oil collection centers shall display a certification sign provided by the Board. The sign shall be in compliance with Public

Resources Code Section 48660(b)(4) and will also include the following information:

(1) State of California Certified;

(2) Contaminated oil, or oil suspected of contamination, may not be accepted;

(3) Space for insertion, by operator, of the center operating hours.

(b) The certification sign must be posted in a location easily readable from a public street. The sign may be posted in a different location if requested in writing and approved in writing by the Board.

(c) The certification sign shall not be displayed by any person, company, or other entity not approved for certification by the Board.

(d) The certification sign is the property of the Board and shall be returned to the Board upon surrender, expiration, or cancellation of certification.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (a), repealer of subsection (a)(2) and subsection renumbering filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18651.1. What If Local Zoning Ordinances Prevent Posting of the Sign Provided by the Board?

Where local zoning ordinances do not permit posting of the sign provided by the Board in accordance with Section 18651.0 of this Article, the Section 48660(b)(4) of the Public Resources Code, the collection center operator must petition the Board by submitting a written request describing how the center will meet these requirements. The Board shall notify the center in writing within thirty (30) calendar days of receipt of the petition that its request is either:

(a) Approved; or

(b) Denied and the reasons for denial.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a) and (b) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18651.2. What Are the Required Operational Procedures for Certified Used Oil Collection Centers?

(a) Certified used oil collection centers operators shall operate in accordance with all Federal, State and local laws and regulations.

(b) Certified used oil collection centers shall accept used oil from the public at no charge and shall verbally offer to pay persons an amount equal to the recycling incentive the center will receive for the used oil.

(c) Certified used oil collection center operators shall not accept more than twenty (20) gallons of used oil, in containers not larger than five (5) gallons, from a person each day.

(d) Operators of certified used oil collection centers may set a maximum limit for used lubricating oil accepted at certified centers. The maximum limit may not be less than 5 gallons per person per day.

(e) Used oil received from the public may be refused if it is contaminated by materials which render the used oil infeasible for recycling. Certified used oil collection center operators shall provide the name and address of the nearest business or governmental entity which accepts contaminated oil to any member of the public whose used oil is refused due to contamination.

(f) If the collection center accepts used industrial oil in addition to used lubricating oil, it shall maintain a Used Industrial Oil Receipt Log. The Industrial Oil Receipt Log shall include:

(1) Date used industrial oil received; and

(2) Quantity of used industrial oil received, in gallons or quarts.

(g) If the collection center is owned or operated by a used oil hauler or a used oil recycling facility, it shall maintain a Used Oil Receipt Log. The Used Oil Receipt Log shall include:

(1) An entry for each receipt of used oil. This entry shall include:

(A) Printed name and signed name of patron;

(B) Date received;

(C) Quantity of oil received, in gallons or quarts;

(D) Amount of recycling incentive fee paid, if any;

(E) Indication if the oil is lubricating or industrial oil; and

(F) An indication if the used lubricating oil was:

1. From out of state (in which case no incentive payment was made); or

2. Anonymously donated.

(h) Logs must be available for inspection at the collection center, or other location specified in accordance with Section 18650.7 of this Article, during normal business hours. Logs must contain data for the last three–year period.

(i) If the collection center is owned or operated by a used oil hauler or a used oil recycling facility:

(1) The percentage of anonymously donated used lubricating oil received must not exceed ten (10) percent of the total amount received for any quarter.

(2) The Board may refuse to pay the recycling incentive to the center for the amount of anonymously donated used lubricating oil in excess of ten (10) percent of the total amount received for any quarter.

(3) Should a center wish to receive payment of the recycling incentive for a quantity of anonymously donated used lubricating oil in excess of ten (10) percent of the total amount received for any quarter, the center shall petition the Board for approval. Such petition shall be a written request describing why the center is entitled to payment. The Board shall notify the center in writing within thirty (30) calendar days of receipt of the petition that it is either:

(A) Approved, or

(B) Denied and the reasons for denial.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48660(b), 48660(c), 48660(d), and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a) and (e), new subsections (f)–(f)(1)(F)3, and (h)–(h)(3)(B), and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of section and NOTE filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18651.3. How Do I Calculate the Amount of Recycling Incentive I Owe to a Person Delivering Used Oil?

(a) To calculate the payment, multiply the total number of quarts received by the value of the recycling incentive set by the Board. Payment to the patron must be based on a determination of the nearest quart.

(b) A certified used oil collection center shall have available at all times graduated container capable of accurately measuring, in one quart increments, and safely transferring, one liquid gallon. The graduated container shall be used for measurement if the amount of oil brought in by the public is in question by either the patron or the collection center staff.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660(b)(2), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Editorial correction of subsection (b) (Register 95, No. 20).

§ 18651.4. As the Operator of a Certified Used Oil Collection Center, How Do I Comply with the Act's Requirement for Periodic Advertising in Local Media?

(a) Advertising using one or more of the following mechanisms at least once every six months shall constitute compliance with the requirements of the Act:

(1) Newspaper, magazine, newsletter or other periodic publication;

(2) Radio;

(3) Press releases, public service announcements, or feature news;

(4) Printed material including brochures or posters;

(5) Outdoor advertising including billboards and transit signs;

(6) Special events;

(7) Television;

(8) Direct mail;

(9) Yellow pages.

(b) An advertisement shall include the name, location, and hours used lubricating oil is accepted at the center and indicate that the center accepts used lubricating oil at no charge, and offers payment of the recycling incentive.

(c) Two or more collection centers may jointly advertise their centers provided the name, location, and hours of each center is identified, and the form and frequency of advertisement complies with part (a) of this Section. The advertisement must also indicate that each center accepts used lubricating oil at no charge and offers payment of the recycling incentive.

(d) Should a collection center wish to implement an advertising program different from that described in part (a) of this Section, the center shall petition the Board for approval by submitting a written request describing how the center will meet the advertising requirement of the Act. The Board shall notify the center in writing within a minimum of ten (10), a median of twenty (20) and a maximum of thirty (30) calendar days of receipt of the petition that its request is either:

(1) Approved; or

(2) Denied and the reasons for denial.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsections (b)–(d) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18651.5. As a Certified Used Oil Collection Center, How Can I Determine If Used Oil is Contaminated in Excess of That Which Would Occur Through Normal Use?

In order to determine contamination in excess of that which would occur through normal use, a certified used oil collection center may test used oil received from the public for halogenated compounds, and may conduct verbal and/or visual screening.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48660(c), 48660.5(a), and 48660.5(b)(1), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18651.6. Under What Conditions Will a Contaminated Used Oil Shipment Be Eligible for Reimbursement of Disposal Costs, Pursuant to Section 48660.5 of the Public Resources Code?

(a) A shipment meeting both of the following conditions will qualify for reimbursement:

(1) Used oil which meets the criteria of Public Resources Code Section 48660.5; and,

(2) Used oil which has been properly disposed of and issued a receipt of disposal. A Uniform Hazardous Waste Manifest may be used for this purpose. Disposal, for the purpose of this Section, means incinerating, burying, or otherwise processing contaminated used oil for purposes of elimination which result in a higher cost than the cost to recycle non–contaminated used oil.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660.5(a), 48660(c), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18651.7. What Constitutes One Shipment in Regards to Reimbursement of Disposal Costs, Pursuant to Section 48660.5 of the Public Resources Code?

A shipment may not exceed the capacity of the storage tank normally used by the certified used oil collection center to contain used lubricating oil received from the public.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660.5(c), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18651.8. How Do I Apply for Reimbursement of Additional Disposal Costs Pursuant to Public Resources Code Section 48660.5?

The Board shall reimburse an operator of a certified used oil collection center for the cost of hauling contaminated oil minus the amount normally charged to haul the same amount of uncontaminated oil pursuant to the requirements of Section 48660.5(a) of the Public Resources Code. To receive reimbursement, an operator must submit a written application to the Board.

(a) An application must include:

(1) The collection center name, its location, and its Board identification number;

(2) The hazardous waste generator identification number (ID Number) assigned by either the California Department of Toxic Substances Control or the U.S. EPA;

(3) Quantity of shipment for which reimbursement is sought, in gallons;

(4) Source, type, and level of contamination (if known);

(5) Registered hazardous waste hauler (pursuant to Article 6.5, Chapter 6.5, Division 20, Health and Safety Code) name, ID Number, and actual total disposal cost;

(6) A statement signed by the applicant(s) as described below, under penalty of perjury. The signature block shall contain an affidavit stating the following: "I certify under penalty of perjury that the information contained in this application is true and correct to the best of my knowledge.";

(7) Signature of collection center supervisor.

(b) Applicant must also submit:

(1) A copy of invoice or receipt from a used oil hauler indicating:

(A) The Uniform Hazardous Waste Manifest number for the shipment;

(B) Amount of actual total disposal cost minus the amount normally charged to pick–up the same amount of uncontaminated oil;

(2) Copy of the Uniform Hazardous Waste Manifest from the used oil hauler;

(3) Copy of established certified used oil collection center procedures for preventing contamination of oil with hazardous waste.

(c) In any calendar year, a certified used oil collection center shall be reimbursed for not more than one shipment of contaminated used oil and for not more than five thousand dollars ($5,000) in disposal costs, subject to the availability of funds pursuant to Public Resources Code Section 48656.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48660.5, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. New first paragraph filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18651.9. Must Certified Used Oil Collection Centers Maintain Written Procedures to Prevent the Acceptance of Contaminated Used Lubricating Oil?

(a) Yes. Established procedures for preventing the acceptance of contaminated used lubricating oil must be in writing and available to Board staff, collection center personnel, and the public during normal business hours.

(b) Procedures may include:

(1) Posted signs which list unacceptable contaminants;

(2) A list of questions to ask patrons regarding contaminants;

(3) A description of tests of used oil for the presence of contaminants.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48660 and 48660.5, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. New NOTE filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

Article 6.1. Registration Requirements for Industrial Generators, Operators of Curbside Collection Programs, and Electric Utilities

§ 18653.0. Scope and Applicability.

In addition to the general requirements of this Chapter, industrial generators, operators of curbside collection programs, and electric utilities wishing to claim the used oil recycling incentive must comply with the provisions of this Article.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New article 6.1 (sections 18653.0–18653.6) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18653.1. Purpose.

The Board requires registration of all industrial generators, operators of curbside collection programs, and electric utilities to facilitate the payment of recycling incentives.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18653.2. As an Industrial Generator, Operator of Curbside Collection Program, or Electric Utility, How Do I Register to Receive Payment of Recycling Incentives?

(a) To register to receive payment of the recycling incentive, a separate, complete application must be submitted to the board by each industrial generator, operator of a curbside collection program, or electric utility.

(b) Applicants may apply for registration in either of the following ways:

(1) Register separately for each location at which used lubricating oil is collected.

(2) Register jointly for multiple used lubricating oil collection locations. If this option is chosen, a primary registrant must provide the information required by Section 18653.3 of this Chapter. The following information must also be provided for each additional location:

(A) Facility name;

(B) Street address;

(C) County;

(D) Phone number;

(E) If applicable, the hazardous waste generator identification number assigned by either the Department of Toxic Substances Control or the U.S. EPA.

(3) Only applicants for registration which are from the same category may apply following the procedures described in section (2) above. For example, an industrial generator and a curbside collection program must submit separate applications for registration.

(c) The filing period for applications is continuous.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including new subsections (b)–(b)(3) and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18653.3. What Information Am I Required to Provide in the Application for Registration?

(a) To be considered complete, applications for registration shall contain the following information:

(1) A request for either initial registration, or for a change in registration.

(A) If the application is for a change in registration, it shall include only that information which has changed since the last application for registration was submitted to the Board.

(2) The type of organization which the generator or program represents.

(A) If the organization is an individual business doing or proposing to do business under a different name, the applicant shall provide a copy of the fictitious business name statement.

(B) If the organization is a partnership, the applicant shall provide a copy of the current partnership agreement.

(C) If the organization is a corporation, the applicant shall provide the corporate number as assigned by the Secretary of State.

(D) If the organization is a husband and wife co–ownership, the application shall contain both names.

(E) If the organization is a local government agency, the applicant shall provide a copy of either the authorizing letter or resolution from the governing board.

(F) If the operation is a private, nonprofit program, the applicant shall submit verification of nonprofit status. Any one of the following will constitute verification:

1. A copy of a letter from the Federal Internal Revenue Service confirming tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code; and

2. A copy of a letter from the State of California Franchise Tax Board confirming tax exempt status pursuant to Section 23701(d) of the Revenue and Taxation Code; or

3. A corporate number assigned by the Secretary of State.

(3) The federal identification number (employer ID number) of the organization.

(4) If the organization is an industrial generator or an electric utility, a description of the physical location of the facility in relation to the nearest cross street.

(5) If an industrial generator or an electric utility, the name, street and mailing address, and phone number of the operation.

(6) If an electric utility, the Public Utilities Commission identification number, if applicable.

(7) If a curbside collection program, the name, street and mailing address, and phone number of the offices of the program operator.

(8) If the organization is a curbside collection program, the actual days of collection, the jurisdiction or area serviced, and a description of other materials collected.

(9) If applicable, the hazardous waste generator identification number assigned by either the Department of Toxic Substances Control or the U.S. EPA.

(10) If an industrial generator, description of the type of business conducted.

(11) An indication whether the proposed applicant also operates or owns a used oil hauler business, as defined in Public Resources Code Section 48623, or a used oil recycling facility, as defined in Public Resources Code Section 48624.

(12) Identify the company name or individual and address to whom the Board should pay the recycling incentive.

(13) Any other information the Board determines is necessary to aid in a finding that the organization is eligible for payment of recycling incentives pursuant to Public Resources Code Section 48651.

(b) The application shall be signed by the applicant(s) as described below, under penalty of perjury. The signature block shall contain an affidavit stating the following: "I certify under penalty of perjury that the information contained in this application is true and correct to the best of my knowledge, and I agree to operate in compliance with the requirements of the California Oil Recycling Enhancement Act, and with all related regulatory provisions."

(1) If the operator is a partnership, the application shall be signed by at least one partner with authority to bind the partnership.

(2) If the operator is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the individual with authority to legally bind the entity to a contract.

(3) If the operator is a husband and wife co–ownership, the application shall be signed by both the husband and wife.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a)(2)(C)1., (a)(2)(F)1.–3. and (b)(3), and new subsection (a)(11) and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18653.4. What Will the Board Do with the Application for Registration Once It is Submitted for Review?

(a) The Board will issue an identification number to all industrial generators, operators of curbside collection programs, and electric utilities upon receipt of the application for registration.

(b) All applications for registration will be reviewed by the Board for compliance with these regulations and with the Act.

(c) The Board will periodically conduct field investigations to verify the ongoing accuracy of information contained in the registration application.

(d) The Board will notify the applicant in writing within a minimum of six (6), a median of eight (8), and a maximum of ten (10) working days of receipt of the application that it is either:

(1) Complete and correct and accepted for further review; or

(2) Incomplete and rejected and the reasons for rejection.

(e) Upon determining that an application is complete and correct, the Board shall notify the applicant in writing within a minimum of twenty–five (25), a median of thirty–five (35), and a maximum of forty–five (45) calendar days that registration is either:

(1) Granted; or

(2) Denied and the reasons for denial.

(f) Reasons for denial of registration may include, but will not be limited to, any of the following:

(1) Failure to provide information or documentation to complete the application as stipulated in Section 18653.3 of this Chapter;

(2) The industrial generator's, curbside collection program's, or electric utilities' registration history demonstrates a pattern of operation in violation of the requirements of the Act, including all relevant regulations adopted herein;

(3) The industrial generator's, curbside collection program's, or electric utilities' registration history demonstrates outstanding fines, penalties, or unresolved audit findings.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (f)(2) and (f)(3) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18653.5. As an Industrial Generator, Operator of a Curbside Collection Program, or an Electric Utility, May I Withdraw an Application for Registration?

Yes. An applicant may withdraw an application from review by the Board. Such withdrawal shall be requested in writing and submitted to the Board. A withdrawal of application does not prohibit an industrial generator, an operator of a curbside collection program, or an electric utility from reapplying at a later date.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18653.6. As an Industrial Generator, an Operator of a Curbside Collection Program, or an Electric Utility Which Has Already Registered, Might There Ever Be an Occasion When I Will Need to Submit a New Application?

(a) Yes. Should there be a change in any of the information included in the most recent registration application submitted to the Board you are required to submit a new application.

(b) A new application shall be submitted at least sixty (60) calendar days prior to implementing the changes in part (a) above to avoid any lapse in incentive payments.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Section 48651, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18654. How Does the Board Calculate Used Oil Recycling Rates?

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48631(c) and (d) and 48676, Public Resources Code.

HISTORY

1. New article 6.2 (section 18654) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Repealer of article 6.2 and section filed 7–6–93; operative 7–6–93 (Register 93, No. 28).

Article 7. Recycling Incentive Payments

§ 18655.1. Who Can Receive Recycling Incentive Payments?

Used oil collection centers certified pursuant to Article 6 of this Chapter, and industrial generators, curbside collection programs, and electric utilities registered pursuant to Article 6.1 of this chapter are eligible to receive recycling incentive payments.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), Public Resources Code.

HISTORY

1. New article 7 (sections 18655.1–18656.0) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18655.2. On What Used Oil Can a Recycling Incentive Be Paid?

(a) For industrial generators, certified used oil collection centers, and curbside collection programs, all lubricating oil sold or transferred in this state or imported into this state after October 1, 1992, for which a $0.04 per quart of $0.16 per gallon fee was paid to the State of California and, after use, was transported after April 1, 1993, by a used oil hauler to a certified used oil recycling facility, or to an out–of–state facility registered with the U.S. EPA and in compliance with the regulations of the state in which the facility is located, is eligible for payment of a recycling incentive.

(b) Certified used oil collection centers may claim the recycling incentive only for used lubricating oil collected from the public and/or generated on–site by the used oil collection center. A certified used oil collection center cannot claim the recycling incentive for used oil generated by an entity other than the center, except used oil delivered by the public in quantities of no more than 20 gallons per person per day.

(c) For electric utilities, all lubricating oil sold or transferred in this state or imported into this state after October 1, 1992, for which a $0.04 per quart or $0.16 per gallon fee was paid to the State of California and, after use, was used to generate electricity after April 1, 1993, is eligible for payment of a recycling incentive. Electric utilities may only claim recycling incentive payments for lubricating oil used in equipment owned by the electric utility.

(d) If the Board finds that it has paid a recycling incentive for used lubricating oil which was transported to a non–certified used oil recycling facility, or to an out–of–state facility not in compliance with regulations of the state in which the facility is located, the claimant shall be responsible for refunding the amount of the payment to the Board. Any refunds may be deducted from future recycling incentive claims.

(e) If the Board finds that it has paid the recycling incentive to the operator of a used oil collection center which was not accepting used lubricating oil from the public at no charge and offering the recycling incentive, the claimant shall be responsible for refunding the amount of the payment to the Board. Any refunds may be deducted from future recycling incentive claims.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including new subsections (b) and (d) and subsection relettering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (d) and new subsection (e) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18655.3. When Can an Incentive Claim Be Submitted?

No more than three incentive claims per quarter shall be submitted to the Board. The last claim for a quarter must be postmarked on or before the last day of the month following that quarter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b) and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18655.4. How Long After Used Oil Is Hauled Away, or Used to Generate Electricity By an Electric Utility Must an Incentive Claim Be Submitted?

A claim must be submitted by the last day of the month following the quarter in which the used lubricating oil was transported by a used oil hauler to a used oil recycling facility, or used to generate electricity by an electric utility.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18655.5. How Do Incentive Claims Relate to Quarterly Reports, as Described in Public Resource Code Section 48670?

(a) Incentive claims satisfy the quarterly report requirements. Businesses must provide a quarterly report or submit a recycling incentive claim only if they want payment for used oil hauled during the quarter.

(b) Industrial generators, curbside collection programs, electric utilities, and certified used oil collection centers must submit an incentive claim/report on or before the last day of the month following each quarter in which used lubricating oil was:

(1) Transported by a used oil hauler to a certified used oil recycling facility;

(2) Transported by a used oil hauler to an out–of–state facility registered with the U.S. EPA and in compliance with the regulations of the state in which the facility is located; or

(3) Used by an electric utility to generate electricity.

(c) No more than three incentive claims/reports will be accepted for each quarter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (a) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18655.51. If I Operate More Than One Certified Used Oil Collection Center, May I Submit a Single Recycling Incentive Claim?

(a) Yes, upon written approval by the Board.

(b) If an operator of more than one certified collection center wishes to submit a single incentive claim for multiple centers, the operator shall make such request for approval in writing. The Board shall notify the operator in writing within forty–five (45) calendar days of receipt of the request that it is either:

(1) Approved; or

(2) Denied and the reasons for denial.

(c) A single incentive claim for multiple centers must include the information required by Sections 18655.6(b), (3), (5), (6), (7), (8), and (9) of this Chapter, for each certified center. The person completing the single incentive claim must provide the information specified in Sections 18655.6(b) (1), and (b)(2) and sign a penalty of perjury statement pursuant to part (b)(4).

(d) Manifest or modified manifest receipts and, if applicable, copies of the purchase receipts, invoices, or other documentation showing payment of the $0.04 per quart or $0.16 per gallon lubricating oil recycling fee must include the identification number as issued by the Board pursuant to Section 18650.4(a) or 18653.4(a) of this Chapter.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), 48660, and 48670, Public Resources Code.

HISTORY

1. New section filed 7–6–93; operative 7–6–93 (Register 93, No. 28).

§ 18655.6. What Must Be Submitted With an Incentive Claim?

Incentive claims submitted by industrial generators, curbside collection programs, certified used oil collection centers and electric utilities must:

(a) Be accurate, complete, and typed or legibly handwritten in English; and

(b) Contain all of the following information:

(1) Full name, address, and telephone number of the certified or registered entity preparing the incentive claim/report; and

(2) Full name and telephone number of a contact person for purposes of the report; and

(3) The identification number as issued by the Board pursuant to Section 18650.4(a) or 18653.4(a) of this Chapter.

(4) The signature and title of the representative of the entity authorized to prepare the report. The signature block shall contain an affidavit stating the following: "I certify under penalty of perjury that the information contained in this claim/report, including attached copies of invoices, manifests and manifest receipts, is true and correct, and that no other claim has been submitted on this used oil to the best of my knowledge."; and

(5) If applicable, the amount of new lubricating oil purchased from a vendor or an oil manufacturer in the quarter or since the last incentive claim/report was submitted. Specify if no lubricating oil was purchased;

(6) If lubricating oil was purchased, copies of the purchase receipts, invoices, or other documentation showing payment of the $0.04 per quart or $0.16 per gallon lubricating oil recycling fee to a vendor or the State of California;

(7) The amount of used lubricating oil transported to a certified used oil recycling facility or to an out–of–state facility registered with the U.S. EPA and in compliance with the regulations of the state in which the facility is located for the period since the previous claim;

(8) Copies of completed, typed or legibly handwritten manifests or modified manifest receipts from used oil haulers pursuant to Health & Safety Code Section 25250.8 for the amount of used lubricating oil for which a claim is being made;

(9) Electric utilities shall include the amount of lubricating oil used to generate electricity pursuant to Public Resources Code Section 48651(b) for the period since the previous claim; and

(10) The total monetary amount being claimed.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (b)(1) and (b)(4)–(5) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of subsection (b)(8) filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

§ 18655.7. Where Are Incentive Claims Submitted?

Incentive Claims and Quarterly Reports shall be delivered to the Board's main business office, to the attention of the Accounting Section. The outside of the package containing the claims must be clearly marked: "Used Oil Recycling Incentive Claim Enclosed."

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b) and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18655.8. What Records Must I Keep to Support an Incentive Claim?

(a) Certified used oil collection centers must:

(1) If applicable, retain copies of purchasing receipts for all lubricating oil purchased that denote a fee of $0.04 per quart or $0.16 per gallon was paid to the State of California or a vendor; and

(2) Retain copies of manifests or modified manifest receipts from used oil haulers to support an incentive payment claim; and

(3) Maintain a log consistent with Section 18651.2 of this Chapter, if used industrial oil is accepted in addition to used lubricating oil.

(b) Curbside collection programs must:

(1) Retain copies of manifests or modified manifest receipts from used oil haulers to support an incentive payment claim.

(c) Electric utilities must:

(1) Retain copies of purchasing receipts for all lubricating oil purchased that denote a fee of $0.04 per quart of $0.16 per gallon was paid to the State of California or to a vendor; and

(2) Maintain documentation indicating:

(A) The date that used lubricating oil from utility–owned equipment was used to generate electricity; and

(B) The amount, in gallons of used lubricating oil from utility–owned equipment that was used to generate electricity.

(d) Industrial generators:

(1) Must retain copies of purchasing receipts for any lubricating oil purchased that specify a fee of $0.04 per quart or $0.16 per gallon was paid to the State of California, or to the distributor; and

(2) Must retain copies of manifests or modified manifest receipts from used oil haulers; and

(3) Must retain all vouchers issued by the Board verifying refunds of fees paid by the Board for lubricating oil that was ultimately used for a use exempt from payment pursuant to Section 48650 of the Public Resources Code.

NOTE: Authority cited: Sections 40502 and 48670, Public Resources Code. Reference: Sections 48651(a) and (b), and 48670, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including repealer of subsection (b)(1) and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18655.9. What Happens If My Incentive Claim is Rejected?

The Board will notify the claimant within thirty (30) calendar days if an incentive claim is rejected and include the reasons for rejection. The claimant may resubmit a revised claim. If the Board denies payment of an incentive claim, the claimant may submit a written request for a Board hearing. Request for a hearing must be submitted within thirty (30) days of notification of rejection.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48660 and 48680, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of section transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18656.0. How Long Will It Take for the Board to Process My Claim?

You can expect payment for your incentive claim within fifty (50) calendar days of the postmark date of your claim. The Board will process and forward your claim for payment to the State Controllers Office (SCO) within 35 days after the postmark date. If the Board finds cause to investigate any provisions of your claim this time period will be extended until resolution. The SCO will pay the claim within 15 calendar days of receipt of the claim from the Board.

NOTE: Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48651(a) and (b), and 48670, Public Resources Code. Section 926.17, Government Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Amendment of section and NOTE filed 6–16–95; operative 7–17–95 (Register 95, No. 24).

Article 8. General Provisions for Used Oil Recycling Grants

§ 18658.0. Scope and Applicability.

The regulations contained in this Chapter pertain to grants from the California Used Oil Recycling Fund (Fund) to local agencies for the implementation of used oil collection programs.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48613, 48690 and 48691, Public Resources Code.

HISTORY

1. New article 8 (sections 18658.0–18658.3) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18658.1. Programs Eligible for Funding.

(a) Used oil collection programs eligible for funding from the Fund shall provide for activities relating to the implementation of existing or new used oil collection programs. These programs shall meet either of the criteria listed below or a combination of the two based upon how many residents are served by each:

(1) Ensure that at least one certified used oil collection center is available for every 100,000 residents not served by curbside used oil collection. For example, one certified used oil collection center must be available for a program with 100,000 residents or less, and three must be available for a program serving 240,000 residents. The center shall accept used oil from the public at no charge. The center shall be open at least four days a week for a total of 20 hours of which three hours each week are outside the weekday hours of 8:00 a.m. through 5:30 p.m.

(2) Provide curbside collection at least once a month.

(b) Programs eligible for funding from the Fund shall include a public education program to inform the public of locally available used oil recycling opportunities.

(c) A local agency may implement its used oil collection program in conjunction with other similar programs in order to improve used oil recycling efficiency.

(d) A county or local agency whose program has not served a specific city or area within the county is not eligible to obtain the funds the city or area would have been eligible to receive.

(1) A county may not claim the service area of a city that provided a used oil collection program for the area if the city meets the following criteria:

(A) Was the sole sponsor of the used oil collection program for its respective jurisdiction or was part of a regional program of which the county was not a participant; and

(B) Notified the Board and the county in writing by August 31 of the grant year that it met the provisions of this section.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48613 and 48691, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a) and (a)(1), and new subsections (d)–(d)(1)(B) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18658.2. Grant Application Process.

(a) To apply for a block grant, an applicant must comply with the following:

(1) A local agency with an eligible program shall submit the documents specified in Section 18659.1 of this Chapter in order to apply for a grant award.

(2) An original and three (3) copies of the documents required shall be submitted to the California Integrated Waste Management Board, at its principal place of business in care of the Household Hazardous Waste Section. all materials submitted will become the property of the Board and will be retained for a minimum of three years.

(3) The required application documents must be received by the Board on or before the close of the application period specified in Section 18658.3 of this Chapter.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48653 and 48657, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18658.3. Grant Application Period.

Grant applications will be accepted beginning on the first business day of September until the end of the workday on the last business day of October. Applications received after the last business day in October will be returned to the applicants.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48653 and 48691, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of section transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

Article 8.1. Local Government Block Grants

§ 18659.0. Grant Amount.

(a) As specified in Section 48653 of the Public Resources Code, grants will be given for the implementation of local used oil collection programs to cities, based on the city's population, and counties, based on the population of the unincorporated area of the county. Grants to regional programs will be based on the combined population of each city or unincorporated area which is a participant in the regional program.

(b) A local agency shall receive no more than one grant per year from the Fund. Local agencies can pool grant funds to implement regional used oil collection programs.

(c) All population statistics will be obtained through the most current annually revised Department of Finance Report on Population Estimates for California Cities and Counties, which is hereby incorporated by reference.

(d) The population of the unincorporated area in each county and population of each city will be used as a base number to determine the awarded grant amount. The Board will calculate the grant amount each applicant will receive.

(e) To determine the grant amount available to a local agency, the following formula will be used:

(1) Divide A, the total amount in the block grant account, by B, the population of the state, to calculate C, the fraction or per capita value.

$$A / B = C$$

(2) Multiply C, the per capita value, by D, the population of the local agency or regional program, to calculate E, the maximum grant amount the local agency is eligible to receive.

$$C \times D = E$$

NOTE: Authority cited: Sections 48641, 48653 and 48690, Public Resources Code. Reference: Section 48613, Public Resources Code.

HISTORY

1. New article 8.1 (sections 18659.0–18659.5) filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsection (e)(2) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18659.1. Contents of the Grant Application.

(a) A local agency which is eligible for a grant award, pursuant to Section 18658.1 of this Chapter, shall submit to the Board a grant application. The grant application shall include, but not be limited to all of the following:

(1) An Application Cover Sheet, provided by the Board as form CIWMB 306 "Application Cover Sheet" (9/92), which is incorporated herein by reference. (See Appendix A.)

(2) A Program Report, which shall include:

(A) A description of the used oil collection program and the problem that the program is addressing;

(B) An explanation of the program's goals or objectives;

(C) Identification of the tasks necessary to complete the proposed program and an implementation schedule for the proposed tasks;

(D) If applicable, the geographic area to be serviced by a used oil curbside collection program;

(E) The local agency's population and the population served by the local agency's used oil collection program;

(F) The operation plan which describes how the program will be conducted. This may include, but is not limited to, frequency of pickup for a curbside collection program; days and hours of operation for a used oil collection center(s); type of equipment or facilities used; and method of used oil storage and disposal;

(G) A description of the proposed public education program to inform the public of locally available used oil recycling opportunities;

(H) A description of funding sources other than the grant from the Fund, which will be used for the program;

(I) Description of cooperative efforts between local government agencies and interested citizen associations and groups, if any, regarding implementation of the program; and

(J) If a program includes establishing a new used oil collection center(s) to meet the block grant eligibility requirements as specified in Section 48691 of the Public Resources Code, the report shall include a description of how the local agency will ensure the certification of the collection center at the earliest opportunity.

(3) A Budget Report consisting of the itemized costs of the program. This shall include, but is not limited to, the cost of staffing, used oil contractor fees, the cost of public education, public awareness and/or advertising costs, and any purchases of equipment or materials. The budget report shall also contain the source(s) of funding, fees collected, as well as the total cost of all used oil collection programs for which the request for a grant is being made.

(4) To apply for a grant as a regional program a signed copy(s) of the written agreement between the governing bodies involved authorizing the grant application to act on their behalf shall be included in the grant application.

(5) An approved resolution from each applicant's governing body authorizing submittal of the application and identifying the individual authorized to execute any agreements and contracts to carry out the program.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48613, 48690 and 48691, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of subsections (a)(2)(F) and (a)(2)(H)–(I), new subsections (a)(2)(J) and (a)(4), and subsection renumbering transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Change without regulatory effect amending subsection (a)(1) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18659.2. Review of Grant Application.

(a) Board staff shall review an application for a grant to verify that it is complete and satisfies the criteria contained within Section 18659.1 of this Chapter.

(b) Board staff may request additional information related to the grant application required pursuant to Section 18659.1 of this Chapter if the application is incomplete. The applicant will have a minimum of 10 (ten) working days, or an additional time period specified by the Board, to submit the requested information to the Board or will be disqualified from consideration for a grant.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48690 and 48691, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18659.3. Terms and Conditions of a Grant Agreement.

(a) The grant recipient and the Board shall enter into a written grant agreement which contains a description of the program, as approved, and which identifies and ensures compliance with the terms and conditions specified in this Section.

(b) The grant recipient shall obtain prior written approval from the Board, or its designated representative, for any changes to the grant agreement. All requests shall include a description of the proposed change(s) and the reason(s) for the change(s).

(c) The grant recipient shall submit an annual report to the Board, for the term of the grant agreement, on or before January 1 following receipt of the grant. The report shall include any amendments to the local used oil collection program; a description of the implementation of the program and the extent to which the program was successful in addressing the problem of illegal disposal of used oil; and a description of how the block grant for the previous year was expended if applicable. The report shall also include the following information:

(1) A description of the used oil collection center program and/or curbside collection program;

(2) An account of the number of participants in the program;

(3) The amount of used oil collected as a result of the used oil collection center or curbside collection program(s), whichever is applicable;

(4) A description of the public education efforts; and

(5) A description of measures taken by the local agency to continue the program.

(d) Grant recipients shall comply with all applicable federal, state and local laws, ordinances, regulations and permits. The recipient shall maintain certification of the used oil collection center(s) pursuant to Section 48660 of the Public Resources Code.

(e) If a program includes establishment of a new used oil collection center(s) or a new curbside collection program(s) to meet the block grant eligibility requirements as specified in Section 48691 of the Public Resources Code, up to fifty percent (50%) of the grant amount available to a local agency may be withheld until the new collection center(s) becomes certified or the new curbside collection program becomes operational.

(f) If during the term of the grant a collection center(s) used by a local agency to qualify for a block grant:

(1) Does not have an application(s) for certification on file with the Board; or

(2) The center's application(s) or reapplication(s) is denied; or

(3) The center's certification(s) is canceled;

Then the local agency may be required to return grant funds used for that center(s).

(g) If during the term of the grant a curbside collection program(s) used by a local agency to qualify for a block grant ceases to operate, the local agency may be required to return grant funds used for that program(s).

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48690, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including new subsections (e)–(g) transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18659.4. Payment of Grant Funds.

Block grant recipients will be awarded grant funds during January of each grant year.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Section 48690, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order including amendment of section transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).

§ 18659.5. Auditing.

(a) The Board, the State Controller's Office, and the State Auditor General's Office, or their designated representatives, shall have an absolute right of access to all of the grant recipient's records pertaining to a California Used Oil Recycling Block Grant.

(b) All local agencies receiving block grants from the Fund shall maintain an accounting system which utilizes generally accepted accounting principles and practices. In addition to accounting records, all source documents associated with the accounting records shall be maintained. Source documents include, but are not limited to, bid summaries, contracts with the grant recipient, change orders showing approval by a city or county engineer, purchase orders, invoices, paid warrants, time sheets, labor distribution reports and payroll registers.

(c) The accounting records and pertinent documents shall be retained by the grant recipient for at least three (3) years after expiration of the grant agreement, or until the completion of a Board action and/or resolution of issues which may arise as a result of any litigation, claim negotiation or audit.

(d) If an audit reveals that grant funds have been distributed for a program which has either not met the criteria of Section 18658.1 of this Chapter, and/or has not spent grant funds in accordance with the grant agreement, the grant recipient shall repay the money received, plus interest, at the rate the State would have earned on this money had it remained in the Fund. Such forfeitures shall revert to the Fund.

(e) The Board may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined by the Board that the recipient has failed to comply with the terms or conditions of the grant agreement. The Board shall notify the recipient within five (5) working days, in writing, of the determination, the reasons for termination of the grant, and the effective date of termination.

NOTE: Authority cited: Section 48641, Public Resources Code. Reference: Sections 48613, 48674, 48690 and 48691, Public Resources Code.

HISTORY

1. New section filed 1–21–93 as an emergency; operative 1–21–93 (Register 93, No. 4). A Certificate of Compliance must be transmitted to OAL 5–21–93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–21–93 order transmitted to OAL 5–21–93 and filed 7–6–93 (Register 93, No. 28).
3. Change without regulatory effect moving form to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

Chapter 8.2. Electronic Waste Recovery and Recycling

Article 1. General

§ 18660.5. Definitions.

(a) For the purposes of this Chapter, the following shall apply:

(1) "Act" or "the Act" means the Electronic Waste Recycling Act of 2003 (Senate Bill 20, Chapter 526, Statutes of 2003), as amended.

(2) "Approved Collector" means an authorized collector as defined in Section 42463(b) of the Public Resources Code who applies to the CIWMB for approval and whose application is approved pursuant to this Chapter and therefore may be eligible for recovery payments from approved recyclers.

(3) "Approved Dual Entity" means an entity that is both an "approved collector" and an "approved recycler" as defined in this Section.

(4) "Approved Recycler" means a "covered electronic waste recycler" as defined in Section 42463(i) of the Public Resources Code who applies to the CIWMB for approval and whose application is approved pursuant to this Chapter and therefore may be eligible for recycling payments from the CIWMB.

(5) "Bare CRT" means a Cathode Ray Tube with the vacuum relieved and the yoke removed that has been separated from the device housing and has had all circuit boards, wiring and other components detached from the tube.

(6) "Bare Panel" means an LCD, gas plasma, or other non–CRT video display panel that has been separated from the device housing and has

had all circuit boards, lamps, wiring and other components detached from the panel.

(7) "Board" means the California Integrated Waste Management Board, when these regulations refer to an official action that be taken by Board members.

(8) "Cancellation" means a processing or treatment method that qualifies CEWs for recycling payments, removes the CEWs from the payment system eliminating the possibility of double payments, dismantles or destroys the original CEW, and results in treatment residuals as specified in Section 18660.32 of this Chapter.

(9) "Claim Activity Period" means the span of time during which an approved recycler received CEWs from approved collectors, processed and cancelled CEWs, and shipped treatment residuals that results in a recycling payment claim being submitted to the CIWMB.

(10) "CRT" means a Cathode Ray Tube with the yoke still attached that has been separated from a CRT device.

(11) "CRT device" means a whole covered electronic device containing a Cathode Ray Tube.

(12) "California Sources" of CEWs are persons as defined in Section 42463(o) of the Public Resources Code, located in California who generate CEWs after their own use of the CEW. Persons who receive, accumulate, consolidate, store, or otherwise handle discarded, donated or collected CEWs are not the California sources of those CEWs.

(13) "CIWMB" means the California Integrated Waste Management Board, when these regulations refer to the entity as a whole, including staff.

(14) "Collection log" means a record maintained by an approved collector that records CEW collection activities as specified in Section 18660.20(j) of this Chapter.

(15) "Collective Report" means a report submitted to the CIWMB through a trade association, a group of associations, or other organization that represents more than one manufacturer.

(16) "Commingled" means mixed together and impossible to economically or practically separate.

(17) "Covered Electronic Device" or "CED" has the same meaning, for the purposes of this Chapter, as a covered electronic device specified in Section 42463(f) of the Public Resources Code.

(18) "Covered Electronic Waste" or "CEW" means a discarded device that DTSC has determined to be a covered electronic device, as specified by Section 42463(f) of the Public Resources Code.

(19) "Designated Approved Collector" means an approved collector, as defined in subsection (a)(2) of this section, that has been designated by a California local government to provide CEW collection services for or on behalf of the local government and who, in the course of providing the services for the local government, would not be subject to the source documentation requirements pursuant to Section 18660.20(j)(1)(B) of this Chapter.

(20) "DTSC" means the Department of Toxic Substances Control.

(21) "End–Use Destination" means the location where the treatment residuals from the approved recycler are sent after cancellation.

(22) "Further treat" means, for the purposes of this Chapter, activities such as crushing, size reduction, washing, cleaning, smelting, or similar steps taken to process the treatment residual rendering it more marketable. "Further treat" does not mean, for the purposes or this Chapter, receiving, storing, accumulating, consolidating, brokering, shipping, disposing or other similar activities that do not alter the form of the treatment residual.

(23) "Handler", for the purposes of this Chapter, has the same meaning as a universal waste handler or CRT material handler, as applicable, as defined in Section 66273.9 of TItle 22 of the California Code of Regulations.

(24) "Illegal Disposal" means, for the purposes of this Chapter, the disposal or placement of CEWs on a property without the permission of the owner(s) of, or responsible party(ies) for, the property.

(25) "Load" means a single transfer (a pick up or delivery) of CEWs, such as from a California source to a collector or from a collector to a recycler.

(26) "Load Check Activities" means, for the purposes of this Chapter, the efforts made to identify, retrieve and divert from the disposed solid waste stream those CEWs that have been illegally discarded by generators. "Load Check Activities" do not include the rejection or acceptance of CEWs due to the lack of source documentation.

(27) "Manufacturer Payment" or "Manufacturer Take Back Payment" means a payment made by the CIWMB to a registered manufacturer that takes back covered electronic wastes (CEWs) from a California source for the purposes of recycling the CEW pursuant to Section 42476(g) of the Public Resources Code.

(28) "Manufacturer Payment Claim" means a registered manufacturer's request submitted to the CIWMB with all required documentation for a manufacturer payment.

(29) "Manufacturer Take Back" means a program administered by a registered manufacturer that accepts CEWs from California sources for the purposes of recycling.

(30) "PBBs" mean Polybrominated Biphenyls

(31) "Processing log" means a record maintained by an approved recycler that records CEW activities associated with CEW cancellation, such as but not limited to weighing, dismantling, crushing, shredding, etc., as specified in Section 18660.21(b) of this Chapter.

(32) "Product Category" means the types of covered electronic devices as defined in Section 42463(f) of the Public Resources Code. These categories include, but are not limited to, the following:

(A) Cathode Ray Tubes (CRTs) devices used in televisions,

(B) CRTs devices used in monitors,

(C) Liquid Crystal Display (LCD) monitors,

(D) Laptop computers containing LCD screens,

(E) LCD televisions,

(F) Gas plasma display televisions, and

(G) Other video display devices as specified by the DTSC pursuant to Section 25214.10.1(d) of the Health and Safety Code.

(33) "Proof of approval" means the unique identification number and expiration date, issued by the CIWMB that identifies a collector or recycler as being approved pursuant to this Chapter.

(34) "Proof of designation" means a letter or other document that must be secured by a designated approved collector from a California local government that, at a minimum, specifies the following information:

(A) The beginning and end dates of the designation.

(B) The geographic area within which the designated approved collector is providing CEW collection services for the local government and the locations(s) at which the collection service is provided.

(C) The customer type to be served by the designated approved collector (i.e. residential, commercial, etc).

(D) The nature of collections activities to be provided by the designated approved collector (i.e. drop–off receipt, curbside service, illegal disposal clean–up, etc).

(E) Contact information for the designating authority.

(F) If the proof of designation secured by the designated approved collector is a document other than a letter from the local government, the proof must also include the designated approved collector's written notification to the local government that such other document has been used. The written notification provided to the local government must be accompanied by a copy of the document being used to demonstrate designation.

(G) If, after January 1, 2005, and before the effective date of this regulation, a designated approved collector has secured a document from a local government that does not meet the definition of proof of designation as specified in this Section, such document may be used by a designated approved collector to comply with applicable requirements of this Chapter through March 31, 2006.

(35) "Receiving log" means a record maintained by an approved recycler that documents CEW transfers from approved collectors to the approved recycler.

(36) "Recovery payment" means the payment made by an approved recycler to an approved collector in exchange for the transfer of CEWs pursuant to Section 42477 of the Public Resources Code.

(37) "Recovery payment request" means an approved collector's request for recovery payment made to an approved recycler accompanying the transfer of CEWs.

(38) "Recycling payment" means the payment made by the CIWMB to an approved recycler that includes a recovery component related to recycler payments to collectors pursuant to Section 42477 of the Public Resources Code and a recycling component for CEW cancellation pursuant to Section 42478 of the Public Resources Code.

(39) "Recycling payment claim" means an approved recycler's claim that includes all required documentation submitted to the CIWMB for recycling payments for cancelled CEWs.

(40) "Registered Manufacturer" means a manufacturer as defined in Section 42463(n) of the Public Resources Code who registers with the CIWMB pursuant to this Chapter and therefore may be eligible for manufacturer payments from the CIWMB.

(41) "Source–anonymous CEWs" means CEWs whose originating California source cannot be identified in collection log information required pursuant to Section 18660.20(j)(1)(B) of this Chapter.

(42) "Source documentation" means collection logs and other information developed, maintained and transferred pursuant to Section 18660.20(h) of this Chapter that demonstrates the eligibility, originating generator and/or intermediate handlers of collected CEWs as applicable.

(43) "Standard Statewide Recovery Payment Rate" means the amount paid to an approved collector per pound of CEWs transferred to an approved recycler to cover the cost of collection, consolidation and transportation of CEWs as established pursuant to Section 42477 of the Public Resources code.

(44) "Standard Statewide Combined Recycling and Recovery Payment Rate" means the amount paid to an approved recycler per pound of CEWs cancelled and claimed to cover the cost of receiving, processing and recycling CEWs as established pursuant to Section 42478 of the Public Resources Code, and making recovery payments to approved collectors.

(45) "Transfer" or "Transferred" means physically changing possession of CEWs, such as a transfer from a California source to a collector or from a collector to a recycler.

(46) "Transfer documentation" means, for the purposes of this Chapter, records and/or receipts that record the transfer of CEWs from an approved collector to an approved recycler, which include the weight, number, and source of the transferred CEWs, and the date(s) of transfer.

(47) "Treatment residuals" means any material resulting from the dismantling or treatment of a CEW. Treatment residuals are not considered CEWs and are not eligible for payment. In some cases, treatment residuals may be used to demonstrate the prior processing of CEWs, and bills of lading for the material may be required as part of the claim for payment submitted by an approved recycler.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42463, 46465.2, 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New Chapter 8.2 (articles 1–5), article 1 (section 18660.5) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new Chapter 8.2 (articles 1–5), article 1 (section 18660.5) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. New subsections (a)(16), (a)(19), (a)(21), (a)(25), (a)(29) and (a)(35) and subsection renumbering filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 2.0. Electronic Waste Payment System — Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Report

§ 18660.6. Applicability and Limitations.

(a) Limitations on the types of CEWs eligible for payments:

(1) An approved collector may request recovery payment only for the types of CEWs specified by DTSC that are transferred to an approved recycler by the collector.

(2) An approved recycler may claim recycling payment only for the types of CEWs specified by DTSC that are received from an approved collector and are cancelled by the recycler.

(3) A registered manufacturer may claim manufacturer payment only for the types of CEWs specified by DTSC that the manufacturer takes back for recycling.

(b) Limitations on the timeframes eligible for payments:

(1) An approved collector, an approved recycler, or a registered manufacturer shall not receive payment for any CEWs transferred from a California source before January 1, 2005.

(2) An approved collector shall not request recovery payments from recyclers for transfers that occur prior to the approval of the collector's application by the CIWMB.

(3) An approved recycler shall not claim recycling payments from the CIWMB for CEWs cancelled prior to the approval of the recycler's application by the CIWMB.

(4) A registered manufacturer shall not claim manufacturer payments from the CIWMB for recycling that occurs prior to the manufacturer's registration with the CIWMB.

(c) Limitations on the Sources of CEWs and CEWs eligible for payments:

(1) Only CEWs resulting from a California source are eligible for recovery, recycling, or manufacturer payments.

(2) CEWs owned by a person in California, but used entirely outside of California are not eligible for payments.

(3) Source–anonymous CEWs, documented pursuant to Section 18660.20(j)(1)(E) of this Chapter, are eligible for recovery and recycling payments if:

(A) The source–anonymous CEWs result from load check activities as defined in Section 18660.5(a)(26) conducted at permitted solid waste facilities whose operator is an approved collector or, if not an approved collector, the source–anonymous CEWs are directly transferred from the permitted solid waste facility to an approved collector; or

(B) The source–anonymous CEWs result from illegal disposal clean–up activities conducted by an approved collector who is a local government or its designated approved collector; or

(C) The source–anonymous CEWs result from illegal disposal on property owned or managed by an approved collector.

(4) CEWs are transferred to a designated approved collector are not eligible for payments unless the CEWs are accompanied by applicable source documentation pursuant to Section 18660.20(h) of this Chapter.

(d) Limitations on the ability of collectors and recyclers to charge a fee:

(1) If the recovery payment from a recycler does not fully cover the net cost of CEW recovery, and the collector establishes a cost–free opportunity for a California source to transfer CEWs to the collector, then an approved collector may charge a fee for CEW recovery.

(2) If the recovery payment from a recycler fully covers the net cost of CEW recovery, an approved collector shall provide CEW recovery at no charge to California sources or the CIWMB may revoke approval and direct recyclers to deny recovery payments to the collector.

(3) If the recycling payment from the CIWMB does not fully cover the net cost of CEW recycling, an approved recycler may charge a fee for CEW recycling.

(4) If the recycling payment from the CIWMB fully covers the net cost of CEW recycling, an approved recycler shall provide CEW recycling at no charge to approved collectors or the CIWMB may revoke approval and deny recycling payments to the recycler.

(e) Limitations on recovery payments:

(1) An approved recycler shall make recovery payments at the rate specified in Section 18660.33 of this Chapter to approved collectors for all CEWs transferred to the recycler and that are accompanied by applicable source documentation pursuant to Section 18660.20(h) of this Chapter.

(2) The CIWMB shall revoke a recycler's approval and deny recycling payments to a recycler that fails to make recovery payments to approved collectors as specified in this Chapter.

(3) An approved recycler shall not make the recovery payments as specified in this Chapter to collectors who are not approved pursuant to this Chapter.

(4) An approved recycler may make other types of payments, not provided for under this Chapter, to a collector regardless of the collector's approval status.

(5) An approved recycler shall not provide recovery payments to a collector other than the approved collector that transfers the CEWs to the recycler, but nothing limits the collectors involved in prior transfers from negotiating payments among themselves unrelated to the recovery payment provisions of this Chapter.

(6) An approved collector is eligible for recovery payments only if the collector establishes a cost–free opportunity for a California source to transfer CEWs to the collector.

(7) An approved collector is entitled for recovery payments only for CEWs transferred to the recycler that are accompanied by applicable source documentation pursuant to Section 18660.20(h) of this Chapter.

(8) The approved collector shall repay the approved recycler the amount of recovery payment that was paid if an approved collector has received recovery payment from an approved recycler for which the approved collector was not entitled.

(f) Limitations on recycling payments:

(1) The CIWMB shall make recycling payments only to approved recyclers who:

(A) Cancel CEWs using cancellation methods as specified in Section 18660.32 of this Chapter.

(B) Document cancellation and meet the other requirements of this Chapter.

(2) The CIWMB shall not make recycling payments to a recycler other than the approved recycler that cancels the CEWs, but nothing limits the recyclers involved in subsequent transfers from negotiating payments among themselves unrelated to the recycling payment provisions of this Chapter.

(3) The CIWMB shall not make recycling payments for reuse of either a whole CEW or of a partially disassembled CEW, such as a CRT with an attached yoke.

(g) Limitations in relation to current business practices:

(1) The CIWMB shall not limit the ability of approved collectors and approved recyclers to transfer or not transfer CEWs to or from any party.

(2) The CIWMB shall not limit the ability of approved collectors and approved recyclers from entering into contracts with each other or other parties.

(3) The CIWMB shall not limit the ability of collectors to recover CEWs or recyclers to recycle CEWs without participating in the system described in this Chapter.

(4) If collectors wish to receive recovery payments or recyclers wish to receive recycling payments, then they must meet the requirements in this Chapter.

(h) Limitations on recycling payments on exported CEWs and the disposition of treatment residuals:

(1) The CIWMB shall not approve recyclers located outside the State. CEWs sent to and cancelled by unapproved recyclers are not eligible for payments pursuant to this Chapter regardless of the location of the unapproved recycler.

(2) If treatment residuals are disposed to land, water or air, then a recycler shall not be eligible for recycling payments for the original CEWs unless the treatment residual is not economically feasible to recycle and/or cannot be recycled because it would pose a hazard to public health, safety or the environment.

(i) Limitations on the manufacturer payment system:

(1) The CIWMB shall not register any entity other than a manufacturer as defined in Section 42463(n) of the Public Resources Code to be a registered manufacturer.

(2) The CIWMB shall not make manufacturer payments to any entity other than a registered manufacturer.

(3) A registered manufacturer shall only claim payment for, and the CIWMB shall only make manufacturer payments for, CEWs received from California sources that are processed for recycling that in a manner that results in cancellation as specified in Section 18660.32 of this Chapter or an equivalent result.

(4) A registered manufacturer shall not claim payment for, and the CIWMB shall not make manufacturer payments for, CEWs that are reused, repaired, refurbished or otherwise returned to use.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42472(b), 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New article 2 (sections 18660.6–18660.10) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 2.0 (sections 18660.6–18660.10) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. New subsections (c)(3)–(4) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.7. Document Submittals.

(a) A collector, a recycler, or a manufacturer shall prepare and submit applications, registrations, claims and/or reports required pursuant to this Chapter in the manner designated by the CIWMB.

(b) The CIWMB shall only accept collector, recycler or dual entity applications, claims and reports containing all the required information and bearing an original signature of the primary applicant, or a person with signature authority as designated by the primary applicant pursuant to Section 18660.11 of this Chapter.

(c) The CIWMB shall only accept manufacturer registrations, claims and reports containing all the required information and bearing an original signature of the primary registrant, or a person with signature authority as designated by the primary registrant pursuant to Section 18660.35 of this Chapter.

(d) The CIWMB shall provide forms upon request that may be used to meet the requirements for the applications, registrations, and payment claims specified in this Chapter.

(e) A collector, a recycler, or manufacturer shall ensure that applications, registrations, claims, reports and all applicable supporting documentation are accurate, complete, and typed or legibly handwritten in English using permanent ink. A collector or a recycler may void errors only by using a single line through the error. A collector or a recycler shall not use correction fluid, correction tape or erasures for correcting errors on any document required by or submitted to the CIWMB.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.8. Records.

(a) An approved collector, an approved recycler, or a registered manufacturer shall send written notice to the CIWMB regarding any change in location, or intent to establish a new location, of records required by this Chapter no less than 10 days prior to the change. In the written notice, an approved collector or an approved recycler shall include its name and identification number from the proof of approval, the complete present and potential future address of the location of the records, if applicable, and the names and telephone numbers of the individuals responsible for such records.

(b) All records maintained pursuant to this Chapter must include the books of account that are ordinarily maintained by a prudent business person engaged in the same activity, together with all bills, receipts, invoices, manifests, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(c) An electronic data processing system must have built into its program a method of producing visible and legible records that will provide the necessary information to determine compliance with the requirements of this Chapter.

(d) An approved collector, an approved recycler, or a registered manufacturer shall maintain records for at least three years.

(e) An approved collector, an approved recycler, or a registered manufacturer shall maintain records that are originals, and typed or legibly handwritten in English.

(f) An approved collector, an approved recycler, or a registered manufacturer shall not store records in an unprotected area, in an outside location, in a motor vehicle or in a location where the records are likely to become contaminated, damaged or stolen.

(g) An approved collector, an approved recycler, or a registered manufacturer shall maintain records suitable for examination prepared and retained in accordance with generally accepted accounting principles and good business practice.

(h) If the CIWMB determines that records do not meet the conditions in this Section, the CIWMB may revoke approval and/or deny payments.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.9. Audits.

(a) The CIWMB, or persons authorized by the CIWMB, may conduct audits of approved collectors, approved recyclers, and registered manufacturers to determine compliance with the requirements of this Chapter.

(b) As part of an audit, the CIWMB may do any one or all of the following in relation to CEW recovery or recycling:

(1) Review, examine or investigate any books, records, accounts, and/or documentation.

(2) Observe, review, examine or investigate any on–site activities, operations, processes, CEWs, treatment residuals or other materials.

(3) Observe and inspect transactions.

(4) Verify measurements, counts, weights, and calculations.

(5) Examine and verify revenue, cost and net cost information and calculations.

(6) Use other examination procedures to investigate recovery payments, recycling payments, manufacturer payments, transfers of CEWs or treatment residuals, costs, revenue, net costs, or other activities related to determining compliance with this Chapter.

(c) An approved collector, an approved recycler, or a registered manufacturer shall provide CIWMB staff, or persons authorized by the CIWMB, access to location(s) and/or records for the purpose of audits related to the requirements of this Chapter, and for any or all of the following purposes in relation to CEW recovery or recycling:

(1) To determine compliance with the CIWMB's regulations and with the provisions of the Act.

(2) To determine the accuracy of the information provided in the application for approval or registration.

(3) To determine the accuracy of the information, calculations, weights, counts, and other data upon which claims for payments or payments are based.

(4) For the investigation of complaints related to recovery payments to collectors.

(5) For the investigation of complaints related to the geographic origin of CEWs.

(6) To obtain cost data, revenue data and net cost calculations required for the CIWMB to set and adjust the Standard Statewide recovery payment rate, recycler payment rate and consumer fees.

(7) To obtain sample data to calculate component weight to device weight conversion factors.

(8) To inspect any records required by this Chapter or the Act.

(d) If an approved collector, an approved recycler, or a registered manufacturer fails to provide reasonable access for audits pursuant to this Section, the CIWMB shall do one or more of the following:

(1) Deny approval or registration if a renewal is pending.

(2) Revoke an existing approval or registration.

(3) Recoup monies previously paid by the CIWMB, which were the subject of the audit, accumulated interest, and any associated penalties.

(4) Deny current and future claims for payments.

(e) An approved collector, an approved recycler or a registered manufacturer that must repay monies to the CIWMB based on the results of a CIWMB audit shall pay the entire amount, including the original amount, accumulated interest, and any associated penalties.

(f) An approved collector, an approved recycler or a registered manufacturer shall make any payments, repayments or recoupments in U.S. dollars by check, draft, money order or cashier's check payable to the State of California, Integrated Waste Management Board, or to a designee selected by the CIWMB.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.10. Net Cost Report.

(a) To adjust the statewide recovery and recycling payment rates, establish future payment schedules and adjust the consumer fees, the CIWMB shall periodically update information concerning the net costs of CEW recovery and CEW recycling.

(b) An approved collector or an approved recycler shall maintain records and provide information for use by the CIWMB in the update on their actual net costs to operate.

(c) An approved collector or an approved recycler shall use the following allowable revenues and costs for use in the calculation of net costs:

(1) Revenues in relation to CEW recovery or recycling, other than the payments required pursuant to this Chapter, including but not limited to:

(A) Up–front revenues received, such as from fees charged.

(B) End–use revenues, such as from commodity values.

(2) Costs in relation to CEW recovery or recycling including, but not limited to:

(A) The actual costs of receiving, handling, processing, storing, transferring and transporting CEWs.

(B) The actual costs of canceling CEWs.

(C) Labor.

(D) Property taxes.

(E) Depreciation.

(F) Utilities.

(G) Supplies.

(H) Fuel.

(I) Insurance.

(J) Interest.

(K) General overhead.

(L) Facilities and equipment rent or lease.

(M) Maintenance.

(N) Transportation.

(O) Handling costs.

(P) Disposition costs.

(Q) A reasonable rate of profit or return on investment.

(R) Marketing, promotion and public education.

(d) An approved collector and approved recycler shall submit to the CIWMB a report on the net costs of recovery and/or recycling for the prior calendar year, including:

(1) An annualized summary of the revenues, costs, and net cost (costs minus revenues) of CEW recovery and/or CEW recycling based on the records maintained pursuant to Sections 18660.20(j)(3) and 18660.21(*l*)(5) of this Chapter.

(2) Name, identification number and mailing address.

(3) The name and phone number of a contact person for purposes of the report.

(4) The reporting year and date of preparation of the report.

(5) The total annualized revenues excluding recovery and recycling payments received from the CIWMB, plus a list of the types of revenues included in the revenue calculation.

(6) The total annualized costs, plus a list of the types of costs included in the cost calculation.

(7) The total annualized net costs (annualized costs minus annualized revenues).

(8) The net cost per pound of CEW recovery and the net cost per pound of CEW recycling.

(9) Provide a description of the types of targeted consumers, and the methods of collection used to obtain CEWs from the California sources, including but not limited to:

(A) Drop–off at permanent location,

(B) Temporary event drop off,

(C) Pick up at source,

(D) Pick up at handler location,

(E) Curbside collection,

(F) Landfill drop off and or load check.

(10) The signature and title of a person with signature authority for net cost reports as designated pursuant to Section 18660.11 of this Chapter.

(11) The signature block shall state and certify the following statement: "I hereby declare under penalty of perjury that this net cost report, including any and all figures, calculations and accompanying documents has been examined by me and is true, correct and complete."

(12) The date and place of the signing of the report.

(e) An approved collector or an approved recycler shall convert any data captured on a per unit basis to a per pound basis for the purposes of determining revenues, costs and net costs.

(f) The CIWMB may revoke approval and/or deny recycling payments for failure to submit a net cost report, or for the submission of a fraudulent report.

(g) The net cost report shall be submitted to the CIWMB on or before March 1, 2006, and each year thereafter.

(1) The requirement to submit a net cost report subsequent to March 1, 2007, shall be determined by the Board at a public hearing.

(2) Notice of the requirement to submit a net cost report subsequent to March 1, 2007, shall be issued by the CIWMB on or before December 31 of the year proceeding the year in which the report is next due.

(h) In addition to the net cost report described by this Section, an approved collector or an approved recycler may submit test results, studies or other information for the CIWMB to consider when the Standard Statewide Recovery Payment Rate and/or the Standard Statewide Combined Recovery and Recycling Payment Rate is reviewed and, if necessary, adjusted pursuant to Sections 18660.33 and 18660.34 of this Chapter.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42464, 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Amendment of subsection (g) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 2.1. Electronic Waste Payment System — Applications for Approval

§ 18660.11. General Application Requirements.

(a) Collectors and recyclers may submit an application to become approved at any time.

(b) In applications for approval, collectors and recyclers shall provide the following general information:

(1) Name of organization.

(2) Type of organization:

(A) If the organization is an individual doing or proposing to do business under a different name, the applicant shall provide a copy of any fictitious business name statement.

(B) If the organization is a partnership, the applicant shall provide a copy of the current partnership agreement and any fictitious business name statement.

(C) If the organization is a corporation, the applicant shall provide the corporate number and Articles of Incorporation and name and position of all current corporate officers as filed with the Secretary of State, any fictitious business name statement, and the agent for service of process.

(D) If the organization is a corporation from a state other than California, the applicant shall provide a copy of the approved certificate from the California Secretary of State qualifying and authorizing the corporation to transact business in California.

(E) If the organization is a husband and wife co–ownership, the applicant shall provide both names and any fictitious business name statement.

(F) If the organization is a local government agency, and is applying as a recycler or dual entity, the applicant shall provide a copy of the authorizing resolution from the governing board.

(G) If the organization is a limited liability company (LLC), the applicant shall provide a copy of the Articles of Organization and Statement of Information as filed with the Secretary of State, any operating agreement, any fictitious business name statement, and the agent for service of process.

(H) If the organization is a limited liability company from a state other than California, the applicant shall provide a copy of their certificate from the California Secretary of State authorizing the LLC to transact business in California.

(I) If the organization is a non–profit or charity, the applicant shall provide a description and a copy of the appropriate designation documentation.

(3) Mailing address and physical address.

(4) Name of the contact person.

(5) Telephone number(s) of the contact person.

(6) An e–mail address of the contact person or organization, if available.

(7) List(s) of the persons (if any), in addition to the primary applicant, who are authorized to sign:

(A) Payment claims.

(B) Net cost reports.

(C) Other payment related correspondence with the CIWMB.

(8) An indication of whether the collector or recycler wishes to be included in an on–line registry.

(9) The location in which the records required by this Chapter will be maintained.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New article 2.1 (sections 18660.11–18660.19) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 2.1 (sections 18660.11–18660.19) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.12. Additional Application Requirements for Collectors.

(a) In addition to the general application information required in Section 18660.11 of this Chapter, a collector shall also include the following information:

(1) The date and the name under which the collector notified DTSC as a CRT and/or universal waste handler.

(2) A description of the existing or proposed collection operation, including but not limited to:

(A) The types of California sources from which the collector may recover CEWs, including but not limited to households, businesses, and/or other collectors.

(B) The type(s) of CEWs that may be recovered by the collector.

(C) Whether the collector may recover CEWs from outside of the State of California.

(D) The cost–free opportunity(ies) established by the collector for a California source to transfer CEWs to the collector as required by Section 42476(f)(2) of the Public Resources Code.

(3) Certification statements by the collector as follows:

(A) "The undersigned collector agrees under penalty of immediate revocation of approval and denial of recovery payments that as an approved collector:"

1. "I shall make reasonable efforts to ensure that any CEWs for which payment is claimed originate from a California source."
2. "I shall provide free CEW collection to California sources if the payments I receive from recyclers fully covers the net cost of collection, transportation and charges paid to the recycler."
3. "I shall operate in compliance with the requirements of this Chapter, the Act and with all applicable local, state and federal regulatory provisions."
4. "I shall establish a cost–free CEW collection opportunity for California sources."
5. "I have read and understand the requirements set forth in the statutes and regulations governing this program."

(B) "The undersigned collector certifies under penalty of perjury under the laws of the State of California that the information provided herein is true and correct."

(4) The name and signature of the primary applicant who has the authority to sign and bind the collector to this application.

(5) The date and location of application.

(b) A collector shall maintain a physical location within the state of California at which:

(1) CEWs can be handled.

(2) All records required by this Chapter shall be maintained.

(c) The CIWMB shall not approve a collector located outside the United States, unless required to by treaty. If the CIWMB must approve a collector outside the United States, the collector must comply with the requirements of Section 42476.5 of the Public Resources Code.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42476.5, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.13. Additional Application Requirements for Recyclers.

(a) In addition to the general information required in Section 18660.11 of this Chapter, a recycler shall also include the following information:

(1) Documentation that the recycler has fulfilled DTSC notification and authorization requirements regarding the handling and processing of CEWs.

(2) A description of the recycling operation, including:

(A) The method(s) of cancellation used by the recycler.

(B) The types of CEWs cancelled by the recycler, pursuant to Section 18660.32 of this Chapter.

(C) Estimated percentages of cancelled CEWs expected to originate from inside of and from outside of the State of California annually.

(3) An explanation and documentation showing how the demonstrations in Public Resources Code Section 42479(b) have been satisfied, including but not limited to the following:

(A) The recycler is in compliance with applicable requirements of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(B) The recycler demonstrates to the CIWMB that the recycler's facility meets all of the following standards:

1. The facility has been inspected by DTSC within the past 12 months, as specified in Section 42479(b)(2)(A). If a DTSC inspection has been requested but not yet completed, then the CIWMB will review the remainder of the application but withhold approval until the DTSC inspection is completed and the facility found to be in conformance.

2. The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

3. The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

4. The facility meets or exceeds the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

(4) Unless the recycler is applying as a dual entity, the name, address, contact person's name and telephone number of at least one (1) collector from which the recycler has accepted, has contracted to accept or intends to contract to accept CEWs for cancellation with a letter from the collector certifying under penalty of perjury that California CEWs from that collector will be transferred to the recycler for recycling.

(5) A completed "Payee Data Record" STD. 204 form (Rev. 6–2003 or as revised) — Department of Finance, State of California with an original signature of the primary applicant. The form will be provided by the CIWMB and is hereby incorporated by reference.

(6) Certification statements by the recycler as follows:

(A) "The undersigned recycler agrees under penalty of perjury and of immediate revocation of approval and denial of recycling payments that as an approved recycler:"

1. "I shall fully reimburse an approved collector for all CEWs and/or CEWs transferred at the rate specified in this Chapter within 90 days"

2. "I shall not adjust fees, charges or other contract provisions upward for the purpose of negating the recovery payment to approved collectors."

3. "I shall provide free CEW recycling by accepting without charge CEWs from approved collectors if the payment from the CIWMB fully covers the net cost of CEW recycling."

4. "I shall operate in compliance with the requirements of this Chapter, the Act and with all applicable local, state and federal regulatory provisions."

5. "I have read and understand the requirements set forth in the statutes and regulations governing this program."

(B) "The undersigned certifies under penalty of perjury under the laws of the State of California that the information provided herein is true and correct."

(7) The name and signature of the primary applicant who has the authority to sign and bind the recycler to this application.

(8) The date and location of application.

(b) The CIWMB shall not approve a recycler located outside California.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.14. Additional Application Requirements for Dual Entities.

(a) An entity that is both a collector and a recycler at the same location may apply for both approvals, and if approved will be an approved dual entity.

(b) In addition to completing and submitting one copy of the General information required in Section 18660.11 of this Chapter, all dual entity approval applications shall contain the information required in Sections 18660.12 and 18660.13 for collector applications and recycler applications, respectively.

(c) Unless there are specific "dual entity" provisions, an approved dual entity, when acting as a collector, shall meet all the requirements in this Chapter for approved collectors.

(d) Unless there are specific "dual entity" provisions, an approved dual entity, when acting as a recycler, shall meet all the requirements in this Chapter for approved recyclers.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.15. CIWMB Review of Applications.

(a) Upon receipt of the application, the CIWMB will notify the applicant within 30 calendar days if the application is complete or incomplete.

(b) If the CIWMB determines the application is incomplete, with exception of a pending inspection by DTSC, the CIWMB notification will list the missing information, and the applicant will have 30 calendar days from the notification to provide the missing information or the CIWMB will deny the application.

(c) After the CIWMB determines that an application is complete, the CIWMB will notify the applicant within 30 calendar days whether the application has been:

(1) Approved, and if so, proof of approval bearing a unique approval identification number will be provided stating the type of approval granted:

(A) Approved collector, and/or

(B) Approved recycler.

(2) Denied, and if so, the cause(s) for denial will be listed. After denial, an application to become approved may be resubmitted at any time after the causes for denial have been corrected.

(d) The CIWMB shall not charge collector or recyclers to process an application.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.16. Approval Term and Applications for Renewal.

(a) An approved collector's approval remains valid for 2 years following the date of approval provided that the information in the original application remains unchanged, the collector continues to meet and fulfill the requirements of this Chapter, and the collector continues to operate in conformance with DTSC requirements.

(b) An approved recycler's approval remains valid for 2 years following the date of approval provided that the information in the original application remains unchanged, the recycler continues to meet and fulfill the requirements of this Chapter, and the recycler continues to operate in conformance with DTSC requirements and submit to inspections by DTSC.

(c) To renew approval, a collector or recycler shall re–apply to the CIWMB on a biennial basis at least 90 calendar days prior to the expiration date of approval.

(d) If a collector or recycler fails to renew approval, after the expiration date all of the following conditions apply:

(1) The approval is expired and invalid.

(2) The collector or recycler shall be ineligible for all payments set forth in this Chapter.

(3) The collector or recycler shall immediately return any issued proof of approval to the CIWMB.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.17. Prohibited Activities.

(a) The CIWMB may deny a renewal or revoke or suspend the approval of a collector or recycler for any of the following prohibited activities:

(1) Failure by a collector or recycler to operate in conformance with DTSC requirements.

(2) Failure by a recycler to submit to a DTSC inspection within any 12–month period.

(3) Failure by a recycler to provide recovery payments to approved collectors as specified in this Chapter.

(4) Failure to submit to CIWMB audits as specified by this Chapter.

(5) Failure to submit a net cost report as specified in Section 18660.10.

(6) Transferring an approval or proof of approval to any other person.

(7) Altering the proof of approval.

(8) A material breach of any of the certification statements contained in the application.

(9) Fraudulently requesting a recovery payment.

(10) Fraudulently claiming a recycling payment.

(11) Submitting a fraudulent net cost report.

(12) Failure to secure, maintain and/or transfer documentation as specified by this Chapter.

(13) Failure to notify the CIWMB of changes to information contained in the application.

(b) If the CIWMB denies a renewal or revokes an approval for prohibited activities, all of the following conditions apply:

(1) The approval is immediately invalid.

(2) The collector or recycler shall be ineligible for all payments set forth in this Chapter.

(3) The collector or recycler shall immediately return any issued proof of approval to the CIWMB.

(c) A collector or recycler may not reapply for approval until 180 calendar days after denial or revocation for prohibited activities.

(d) If the CIWMB suspends an approval for prohibited activities, all the following conditions apply until the CIWMB determines that the cause for suspension has been remedied:

(1) The approval is temporarily invalid.

(2) The collector or recycler shall be ineligible for all payments set forth in this Chapter for recovery and/or recycling activities conducted during the suspension of approval.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.18. Changes to an Approved Application.

(a) An approved collector or an approved recycler shall reapply to the CIWMB for approval at least 90 calendar days prior to the change taking effect, if one of the following changes may occur:

(1) A change in recovery, recycling or business practices that will prevent the approved collector or approved recycler from meeting the requirements of this Chapter.

(2) A change in recovery, recycling or business practices that will result in the breach of a certified statement on the application or in a prohibited activity as specified in Section 18660.17 of this Chapter.

(b) If an unforeseen change occurs an approved collector or an approved recycler shall notify the CIWMB of the change within ten calendar days after the unforeseen change. In cases of notification after a change specified in subsections (1) or (2) in part (a) of this Section, the CIWMB may revoke the approval immediately or may require the collector or recycler to reapply for approval.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on

12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.

3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.19. Appeal of Denial, Suspension or Revocation of Approval.

(a) If the CIWMB denies an application for approval or suspends or revokes an approval, the collector or recycler may appeal that decision and request a hearing within 30 calendar days after the date of the denial, suspension or revocation. Any appeal received by the CIWMB after 30 calendar days from the date of the denial, suspension or revocation shall be denied without a hearing or consideration of the appeal.

(b) This appeal provided for in this Section is also governed by the general administrative adjudication provisions of the California Administrative Procedure Act, found at Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. This appeal is not subject to the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11500.

(c) The collector or recycler requesting a hearing must submit the appeal in writing and ensure that it is received by the CIWMB's main business office, to the attention of the Legal Office. The collector or recycler shall clearly mark the outside of the package containing the appeal with: "e–Waste Appeal Enclosed".

(d) In an appeal, a collector or recycler shall include, at a minimum, all of the following:

(1) The collector's or recycler's name, mailing address, contact name and daytime telephone number.

(2) The type of approval: collector, recycler or both.

(3) The location and street address.

(4) The date on the notification from the CIWMB and the stated reasons for denial, suspension or revocation.

(5) A statement of the basis for objecting to the denial, suspension or revocation.

(e) At any time during the proceeding, before a final decision is issued, the CIWMB, with the consent of the petitioner, may refer the matter to mediation, or binding or non–binding arbitration, consistent with the provisions of Government Code Section 11420.10.

(f) The CIWMB shall provide a hearing before the executive director, or his or her designee, who shall act as a hearing officer. The hearing officer shall consider the application, the reasons for denial, suspension or revocation, and any additional relevant information presented by the applicant or CIWMB staff. The hearing officer shall issue a written decision stating the factual and legal basis for the decision.

(g) The Board may adopt the decision as the final decision, or review all or a part of the decision at a hearing before the Board.

(h) The CIWMB will notify the collector or recycler of the final determination in writing within 20 calendar days from the date on which the Board adopts a final decision.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42463(b) and 42479, Public Resources Code; and Sections 11400.20 and 11415.10, Government Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.

2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.

3. Certificate of Compliance as to 12–13–2004 order, including amendment of section heading and section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 2.2. Electronic Waste Payment System — Business Requirements

§ 18660.20. Requirements for an Approved Collector.

(a) Upon CIWMB approval of its application, an approved collector may begin requesting recovery payments for CEWs documented and transferred to approved recyclers pursuant to the requirements of this Chapter after the approval.

(b) An approved collector shall comply with the requirements of this Chapter, including:

(1) Begin collection activities from California sources within 180 calendar days of approval. The CIWMB may revoke approval if a collector fails to begin collection activities within 180 days.

(2) Transfer at least one (1) load of CEWs to an approved recycler within 180 calendar days of approval. Approved dual entities may also meet this requirement by both collecting and canceling at least one load of CEWs within 180 calendar days of approval. The CIWMB may revoke approval if a collector fails to transfer at least one load of CEWs within 180 calendar days of approval.

(c) An approved collector shall make reasonable efforts to determine if CEWs it collects are from California sources or from non–California sources and shall keep track of those materials separately. Reasonable efforts may include any of the following, but are not limited to:

(1) Posting signs and asking California sources.

(2) Conducting spot checks and/or surveys.

(3) Checking for a valid California identification of a person, a California license plate on a vehicle, and/or a bill of lading showing a California origin.

(4) Requiring additional documentation from California sources or collectors delivering large numbers of CEWs.

(5) Instituting measures to prevent CEWs from being dropped–off anonymously or illegally disposed at the approved collector's facilities or operations.

(d) An approved collector shall not request recovery payment for non–California CEWs.

(e) An approved collector shall determine if CEWs they transfer to recyclers have already been cancelled, and shall keep track of those materials separately.

(f) An approved collector shall not request recovery payment for previously cancelled CEWs.

(g) An approved collector shall provide the CIWMB–issued proof of approval identification number when transferring CEWs to or requesting recovery payments from an approved recycler. If an approved collector, or its agent, fails to provide the proof of approval, the approved recycler may deny recovery payment.

(h) An approved collector shall provide to any approved collector or approved recycler to whom it transfers CEWs information on the origin (California or non–California) and cancellation status of CEWs transferred, including but not limited to the following:

(1) Signed statement listing the sources(s) of the transferred CEWs as recorded pursuant to subsection (j) of this section.

(2) A copy(ies) of the applicable portions of the collection log specified in subsection (j) of this section that describe the collection activities that resulted in the transferred CEWs.

(3) Written description of any activity, such as storage, repair, refurbishment, resale, reuse, transfer, packaging and/or consolidation, that explains any discrepancy between the CEWs transferred and the CEWs collected as recorded in a log specified in subsection (j) of this section.

(4) A copy of any applicable proof of designation specified in subsection (k) of this section associated with CEWs collected while acting as a designated approved collector for a local government.

(i) An approved collector shall operate in accordance with all Federal, State and local laws and regulations.

(j) In addition to the general record keeping requirements in Section 18660.8 of this Chapter, an approved collector shall maintain the following records:

(1) A collection log containing:

(A) For each collection activity or event that results in CEWs transferred to the approved collector, a brief written description of the collection activity or event, including the type of California sources targeted for collection, the date and location the activity or event occurred, the number of CEWs collected, and a estimate of the weight of CEWs collected.

(B) Approved collectors that are not California local governments, nor entities acting as the designated approved collector for a California local government, shall maintain a list of all California sources who discarded the CEWs transferred to the approved collector, including the name and address of the California source and the number of CEWs discarded by the California source.

(C) When receiving five (5) or more CEWs units discarded from a non–residential California source, an approved collector shall record the name of the non–residential organization, an address, a contact person and a telephone number.

(D) A list of other handlers and approved collectors who transferred CEWs to the approved collector in any month, including the name and address of the other handler and approved collector and the number of CEWs transferred and the sources of those CEWs as recorded pursuant to parts (A) and (B) of this Section.

(E) When collecting source–anonymous CEWs, all approved collectors shall:

1. Log the source–anonymous CEW collection activity separately.

2. Provide a brief written description of the activity or incident that resulted in the source–anonymous CEWs.

3. Record the date and location of the activity or incident, the number and an estimate of the weight of source–anonymous CEWs collected from the location of the activity or incident.

4. Record the name, organizational affiliation, address and phone number of a person responsible for the site of the activity or incident.

(2) Records of transfers by load to, and recovery payments from, approved recyclers, including:

(A) Inventory records that document the relationship between the CEWs received from all sources and the CEWs transferred to the approved recycler or to other handlers.

(B) Signed and dated receipts showing the number and weight of CEWs transferred. The approved collector shall identify and record each approved recycler using the name and identification number from the recycler's "proof of approval."

(3) Records on the costs, revenues and net costs associated with the collection, transportation and disposition of all CEWs handled as specified in Section 18660.10 of this Chapter.

(k) An approved collector that is acting as a designated approved collector for a local government shall do the following:

(1) Secure proof of designation as defined in Section 18660.5(a)(29) of this of this Chapter.

(2) Provide a copy of the applicable proof of designation to another approved collector or approved recycler at the time CEWs are transferred from the designated approved collector to another approved collector or approved recycler.

(3) A designated approved collector shall be relieved only of the source documentation requirement specified by Section 18660.20(j)(1)(B) of this Chapter only for those collection activities that occur within the designation as specified in subsection k(1) of this section.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New article 2.2 (sections 18660.20–18660.21) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 2.2 (sections 18660.20–18660.21) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. New subsections (c)(5) and (h)(4), amendment of subsections (j)(1)(B)–(C) and new subsections (j)(1)(D) and (k)–(k)(3) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.21. Requirements for an Approved Recycler.

(a) Upon CIWMB approval of its application, an approved recycler may begin claiming recycling payments for CEWs received from an approved collector and cancelled after the approval.

(b) An approved recycler shall comply with the requirements of this Chapter, including:

(1) Begin CEW cancellation activities within 180 calendar days of approval. The CIWMB may revoke approval if a recycler fails to begin CEW cancellation within 180 days.

(2) Accept transfer of and cancel at least one (1) load of CEWs from an approved collector within 180 days of approval. Approved dual entities may also meet this requirement by both collecting and canceling at least one load of CEWs within 180 days of approval. The CIWMB may revoke approval if a recycler fails to cancel at least one load within 180 days of approval.

(3) Record each approved collector's proof of approval identification number and provide a receipt showing the weight and number of CEWs transferred and the amount of the corresponding recovery payment due to the collector.

(4) Make recovery payments to approved collectors, or their agents, for all CEWs transferred, in accordance with this Chapter, at the time of transfer of CEWs, or at a later time specified in a written contract between the approved collector and approved recycler, but not more than 90 days from the date of transfer.

(5) Cancel CEWs by one or more of the manners prescribed in Section 18660.32 of this Chapter.

(A) An approved recycler shall maintain a processing log that records the date, method of cancellation, and quantity in pounds of CEWs cancelled.

(B) An approved recycler shall maintain inventory records that document the relationship between CEWs received from approved collectors, CEWs processed and cancelled by the approved recycler, and treatment residuals shipped to end–use destinations.

(6) Submit recycling payment claims to the CIWMB as specified in Sections 18660.22 through 18660.31 of this Chapter.

(7) Submit to and obtain a DTSC inspection, within any 12–month period.

(c) Based on information supplied by approved collectors, an approved recycler shall, at a minimum, keep track of the weight of CEWs from both California and non–California sources transferred from approved collectors and ensure that recycling payments are not claimed for non–California source materials.

(d) An approved recycler shall not provide recovery payment to approved collectors for CEWs from non–California sources, or to approved collectors that fail to provide complete and applicable source documentation on CEW origin pursuant to Section 18660.20(h) of this Chapter.

(e) An approved recycler shall not claim recycling payments for non–California CEWs.

(f) Approved recyclers shall determine if CEWs they accept from collectors have already been cancelled and shall keep track of the weight of

those materials and ensure that recycling payments are not claimed for these materials.

(g) An approved recycler shall not provide recovery payment to approved collectors for previously cancelled material.

(h) An approved recycler shall not claim recycling payments for previously cancelled material.

(i) An approved recycler may deny recovery payments for commingled loads in which CEWs cannot be distinguished from other materials.

(j) An approved recycler shall operate in accordance with all Federal, State and local laws and regulations.

(k) An approved recycler shall:

(1) Be equipped with scales and be a weighmaster in accordance with Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions Code.

(2) Measure, record and report weights in pounds and issue certified weights.

(3) Weigh CEWs and/or treatment residuals on a scale or other device approved, tested and sealed in accordance with Division 5 (commencing with Section 12500) of the Business and Professions Code.

(*l*) In addition to the general record keeping requirements in Section 18660.8 of this Chapter, an approved recycler shall maintain the following records:

(1) A receiving log containing a brief written description of CEW transfers by load from approved collectors, the number and weight of CEWs transferred, and the dates the transfers from collectors occurred.

(2) Records of CEW transfers, including all documentation received from an approved collector as specified in Section 18660.20(h), and recovery payments made and/or owed to approved collectors, including signed and dated receipts showing the number and weight of CEWs transferred.

(A) The approved recycler shall identify and record each approved collector using the name and identification number from the collector's "proof of approval."

(B) The approved recycler shall record separately the sum of estimated weights of source–anonymous CEWs reported by and transferred from an approved collector.

(3) A processing log showing the definitive cancellation of CEWs by weight, date and cancellation method, as specified in Section 18660.32 of this Chapter, upon which a payment claim is based.

(4) Records for all bills of lading for treatment residuals including the following information:

(A) Date of shipment.

(B) Quantity and material type in shipment.

(C) The full name and address of shipping service.

(D) The full name and address of the buyer or other transferee, and destination name and address if different.

(5) Records on the net costs associated with the disposition of all CEWs handled, the net costs of accepting the transfer of CEWs, the net costs of each cancellation method used, and any additional administrative costs of providing recovery payments to approved collectors.

(6) Complete records of all claims, attachments and supporting documentation for all recycling payment claims made to the CIWMB.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Amendment of subsection (*l*)(2) and new subsections (*l*)(2)(A)–(B) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 2.3. Electronic Waste Payment System — Recycling Payment Claims

§ 18660.22. General Requirements for Recycling Payment Claims.

(a) An approved recycler shall submit all of the following general information in a claim for recycling payments from the CIWMB:

(1) The full name, mailing address, and federal tax identification number of the recycler preparing the report.

(2) The name and phone number of a contact person for purposes of the report.

(3) The reporting month (calendar month and year) and date of preparation of the report.

(4) The claim activity period, listing the start and end dates.

(5) The total weight of CEW claimed, as calculated in Sections 18660.23, 18660.24, and 18660.25 of this Chapter.

(6) The total monetary amount being claimed.

(7) The signature and title of a person with signature authority for payment claims as designated pursuant to Section 18660.11 of this Chapter. The signature block shall include the following certification statements:

(A) "I hereby declare under penalty of perjury that:"

1. "The approved recycler whom I represent is currently in compliance with all Federal, State and local requirements, including compliance with the requirements of the Act and this Chapter."

2. "All claimed CEWs have been cancelled as specified in Section 18660.32 and are unable to re–enter the payment system, and all treatment residuals specified in Section 18660.22(c) derived from the claimed CEWs have been shipped to an end–use destination authorized to receive and further treat those treatment residuals."

3. "I have certified the weights and verified the calculations, including the adjustments for CEWs from non–California sources and for prior cancellation."

4. "This payment claim, including any and all accompanying documents has been examined by me and is true, correct and complete."

5. "I understand that errors or omissions on my part may result in the CIWMB delaying or denying payment"

6. "I further understand that fraud could result in revocation of the recycler's approval."

(8) The date and place of the signing of the claim.

(b) For each cancellation method used, an approved recycler shall submit no more than one recycling payment claim per calendar month and may only include one reporting month, as specified by Sections 18660.23, 18660.24 and 18660.25 of this Chapter, in a single recycling payment claim. An approved recycler shall prepare payment claims for different cancellation methods separately, but may submit a package containing all the claims for a reporting month.

(c) Prior to submitting a payment claim for cancelled CEWs, an approved recycler shall:

(1) Ship all the following treatment residuals derived from the cancelled CEWs to an end–use destination authorized to receive and further treat the treatment residual:

(A) CRT glass cullet if conducting CRT or CRT–containing CEW cancellation through crushing or shredding.

(B) Bare CRTs if conducting CRT or CRT–containing CEW cancellation through dismantling to a bare CRT after relieving the vacuum.

(C) Gas plasma display glass cullet if conducting non–CRT–containing CEW cancellation through crushing or shredding.

(D) Bare gas plasma display panels if conducting non–CRT–containing CEW cancellation through dismantling to a bare panel.

(2) For each cancelled non–CRT–containing CEWs, the recycler shall record and report the manufacturer name, model number, serial number and weight prior to cancellation.

(3) Only those CEWs that have been processed and documented pursuant to the applicable requirements of subsections (c)(1) and (c)(2) of this section shall be claimed for payment.

(d) An approved recycler shall attach all of the following to the payment claim:

(1) For all CEWs received from collectors during the claim activity period that are cancelled and included in the current claim, a report that includes:

(A) A list of approved collectors from which the transfers of CEWs were accepted with the name and proof of approval identification number of each.

(B) The total weight of CEWs in all loads transferred from each approved collector. Note that this weight may not equal the weight claimed for recycling payment because recovery payments are made on the weight of all CEWs transferred while recycling payments are made on the weight of only those CEWs cancelled.

(C) Signed and dated receipts documenting all CEW transfers from approved collectors.

(D) A copy(ies) of the applicable records specified in Section 18660.21(*l*)(1)–(4) pertaining to the collection and processing activities involving the CEWs cancelled and being claimed for payment.

1. Source documentation not associated with the claimed CEWs shall not be included in the report.

2. Transfer documentation not associated with the claimed CEWs shall not be included in the report.

(E) A sum of the estimated weight of source–anonymous CEWs as reported by and transferred from approved collectors.

(2) For all CEWs cancelled during the claim activity period and that are included in the current claim, a description of cancellation activities that includes:

(A) The type(s) of cancellation method used.

(B) The date(s) when cancellation occurred.

(C) The amount of CEWs processed by dismantling, crushing or shredding by date in pounds.

(D) The dates and destinations of all treatment residual shipments required prior to submitting a claim as specified in subsection (c) of this section.

(3) For all CEWs received from collectors during the claim activity period that are not included in a prior claim and that are not cancelled, a description and quantification of those activities including but not limited to storage, repair, refurbishment, resale, reuse, transfer and/or export.

(e) An approved recycler shall deliver recycling payment claims to the CIWMB's main business office, to the attention of the Accounting Section. An approved recycler shall mark the outside of the package containing the claims clearly with "e–Waste Claim Enclosed."

(f) An approved recycler shall submit timely recycling payment claims so that the CIWMB receives each claim within 45 days of the end of the reporting month, as specified by Sections 18660.23, 18660.24 and 18660.25 of this Chapter. The CIWMB may return without payment any claim received more than 45 days after the end of the reporting month, as specified by Sections 18660.23, 18660.24 and 18660.25 of this Chapter. The CIWMB shall determine a claim's receipt as either the date of the postmark on the claim package, or the date the claim package was physically received by the CIWMB, whichever is earlier.

(g) The CIWMB may reject a claim if it fails to comply with the general requirements of this Section, or the additional requirements in the applicable provisions regarding cancellation methods in Sections 18660.23, 18660.24 and/or 18660.25 of this Chapter.

(h) The CIWMB's rejection of a recycling payment claim shall not extend any applicable due date or time period.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New article 2.3 (sections 18660.22–18660.31) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 2.3 (sections 18660.22–18660.31) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. New subsection (c)(1)(E) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
4. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.23. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT–Containing CEWs Through Crushing or Shredding.

(a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling CRT–containing CEWs through crushing or shredding as specified in Section 18660.32 of this Chapter.

(b) An approved recycler shall base recycling payment claims on the weight of CRT–containing CEWs cancelled.

(c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which one or more shipments of CRT glass cullet were sent to an end use destination.

(d) The reporting month for a recycling payment claim pursuant to this Section is the month in which shipment(s) of CRT glass cullet were made.

(e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling CRT–containing CEWs through crushing or shredding as follows:

(1) The total weight of CRT–containing CEWs cancelled for the reporting month from which all treatment residuals specified in Section 18660.22(c)(1) of this Chapter have been shipped to an end–use destination authorized to receive and further treat those treatment residuals.

(2) The total payment claimed, calculated by multiplying the weight of CRT–containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.

(3) If the amount in subsection (e)(1) of this Section includes CEWs from outside California, CEWs without source documentation, or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.

(f) An example calculation for canceling CRT–containing CEWs through crushing or shredding is included for illustration purposes as follows:

The weight of CRT–containing CEWs cancelled: *1000 pounds*
Times the per pound Standard Statewide combined recovery and recycling payment rate: *X $0.39*

Equals the payment claim for the reporting period: *= $390.00 Total Claim*

(g) An approved recycler shall attach to the payment claim the following documentation from all shipments of CRT glass cullet made during the reporting period of a calendar month:

(1) Shipping reports to end use destinations, including the names of the shipping recycler and the receiving end–use destination.

(2) The date of the shipment and the weight of the CRT glass cullet.

(3) Weight tickets of individual shipments of CRT glass cullet.

(4) Verification of post cancellation disposition, including:

(A) For shipments by sea, the proof of disposition to an end–use destination shall be the on–board bill of lading and an executed contract or other documentation from the intended recipient of the shipment.

(B) For other shipments, the proof of disposition to an end–use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.

(C) For all shipments of CRT glass cullet, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the CRT–containing CEWs, including but not limited to metals, plastics, fibers and wood.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).
4. Amendment of subsection (f) filed 6–23–2008; operative 7–1–2008. Amendment filed without review by OAL pursuant to the exemption for regulations which establish or fix rates, prices, or tariffs (Government Code section 11340.9(g)) (Register 2008, No. 26).

§ 18660.24. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT–Containing CEWs Through Dismantling to a Bare CRT After Relieving the Vacuum.

(a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling CRT containing CEWs through dismantling to a bare CRT after relieving the vacuum as specified in Section 18660.32 of this Chapter.

(b) An approved recycler shall base recycling payment claims on the weight of CRT–containing CEWs cancelled.

(c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which one or more shipments of bare CRTs were sent to an end use destination.

(d) The reporting month for a recycling payment claim pursuant to this Section is the month in which the shipment(s) of bare CRTs were made.

(e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling CRT–containing CEWs through dismantling to a bare CRT as follows:

(1) The total weight of CRT–containing CEWs cancelled from which all treatment residuals specified pursuant to Section 18660.22(c)(1) of this Chapter have been shipped to an end–use destination authorized to receive and further treat those treatment residuals.

(2) The total payment claimed, calculated by multiplying the weight of CRT–containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.

(3) If the amount in subsection (1) of this Section includes CEWs from outside California, CEWs without source documentation, or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.

(f) An example calculation for canceling CRT containing CEWs through dismantling to a bare CRT after relieving the vacuum is included for illustration purposes as follows:

The weight of CRT–containing CEWs cancelled: *1000 pounds*
Times the per pound Standard Statewide combined recovery and recycling payment rate: *X $0.39*

Equals the payment claim for the reporting period: *= $390.00 Total Claim*

(g) An approved recycler shall attach the following documentation for all shipments of bare CRTs made during the reporting period of a calendar month:

(1) Shipping reports to end use destinations, including the names of the shipping recycler and the receiving end–use destination.

(2) The date of the shipment and the weight of the bare CRTs.

(3) Weight tickets of individual shipments of bare CRTs.

(4) Verification of post cancellation disposition, including:

(A) For shipments by sea, the proof of disposition to an end–use destination shall be the on–board bill of lading and an executed contract or other documentation from the intended recipient of the shipment.

(B) For other shipments, the proof of disposition to an end–use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.

(C) For all shipments of bare CRTs, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the CRT–containing CEWs, including but not limited to metals, plastics, fibers and wood.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).
4. Amendment of subsection (f) filed 6–23–2008; operative 7–1–2008. Amendment filed without review by OAL pursuant to the exemption for regulations which establish or fix rates, prices, or tariffs (Government Code section 11340.9(g)) (Register 2008, No. 26).

§ 18660.25. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of Non–CRT–Containing CEWs.

(a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling non–CRT–containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW as specified in Section 18660.32 of this Chapter.

(b) An approved recycler shall base recycling payment claims on the weight of the cancelled non–CRT–containing CEWs.

(c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which it cancels non–CRT–containing CEWs.

(d) The reporting month for a recycling payment claim pursuant to this Section is the calendar month the cancellation occurs.

(e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling non–

CRT–containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW as follows:

(1) The total weight of cancelled non–CRT–containing CEWs for the reporting month from which all treatment residuals specified pursuant to Section 18660.22(c)(1) of this Chapter have been shipped to an end–use destination authorized to receive and further treat those treatment residuals. Note that non–CRT–containing CEWs commingled with other material are ineligible for recycling payment.

(2) The total payment claimed, calculated by multiplying the weight of non–CRT–containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.

(3) If the amount in subsection (1) of this Section includes CEWs from outside California or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.

(4) For each cancelled non–CRT–containing CEWs, the recycler shall record and report the manufacturer name, model number, serial number and weight prior to cancellation.

(f) An example calculation for canceling non–CRT–containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW is included for illustration purposes as follows:

The weight of non–CRT–containing CEWs cancelled: *1000 pounds*
Times the per pound Standard Statewide combined recovery and recycling payment rate: *X $0.39*

Equals the payment claim for the reporting period: *= $390.00 Total Claim*

(g) An approved recycler shall attach the following documentation for all shipments of circuit boards from non–CRT–containing CEWs made during the reporting period of a calendar month:

(1) Shipping reports to end use destinations, including the names of the shipping recycler and the receiving end–use destination.

(2) The date of the shipment and the weight of the circuit boards.

(3) Weight tickets of individual shipments of the circuit boards.

(4) Verification of post cancellation disposition, including:

(A) For shipments by sea, the proof of disposition to an end–use destination shall be the on–board bill of lading.

(B) For other shipments, the proof of disposition to an end–use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.

(C) For all shipments of non–CRT–containing CEWs circuit boards, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the non–CRT–containing CEWs, including but not limited to metals, plastics, and fibers.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).
4. Amendment of subsection (f) filed 6–23–2008; operative 7–1–2008. Amendment filed without review by OAL pursuant to the exemption for regulations which establish or fix rates, prices, or tariffs (Government Code section 11340.9(g)) (Register 2008, No. 26).

§ 18660.30. CIWMB Review of Recycling Payment Claims.

(a) The CIWMB shall review a recycling payment claim and determine if a recycling payment is due pursuant to this Chapter. If the CIWMB has cause to investigate any aspect of a claim, the review may be extended until resolution of all issues aspects under investigation.

(b) The CIWMB may deny or adjust payment for any of the following reasons:

(1) The CIWMB determines that:

(A) The signature on the claim is not that of a person with signature authority for recycling payment claims as designated pursuant to Section 18660.11 of this Chapter.

(B) The recycler did not have current approval for the reporting period and/or the cancellation period in the claim.

(C) The approved recycler failed to meet the requirements in this Chapter or committed an activity prohibited in this Chapter.

(D) The payment claim contains a numerical discrepancy between values or calculations reported on the claim and the CIWMB verified values and calculations.

(E) The facility has not been inspected by DTSC within the past 12 months, as specified in Section 42479(b)(2)(A) of the Public Resources Code.

(F) The recycler is ineligible for payment pursuant to Section 42479(b)(1) of the Public Resources Code.

(G) The payment claim is deficient with regard to any of the following:

1. CEW source documentation
2. CEW transfer documentation
3. CEW processing documentation
4. Treatment residual disposition documentation
5. Any other documentation required as part of a payment claim as specified in Sections 18660.22 through 18660.25 of this Chapter.

(2) The CIWMB has prevailed against the claimant in a civil or administrative action and money is owed to the CIWMB as a result of the action.

(3) The CIWMB discovers, as part of an application review, claim review or an audit, significant inconsistencies or fraud.

(c) If the CIWMB adjusts or denies a payment claim based on deficiencies in documentation specified in subsection (b)(1)(G) of this section, an approved recycler shall not resubmit as part of a future claim that same documentation, or any revised form of that documentation, seeking payment for those CEWs for which payment had been denied.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.31. Appeal of Denied or Adjusted Recycling Payment Claims.

(a) An approved recycler may file a formal appeal by writing to the CIWMB within 30 calendar days of the warrant date of an adjusted payment or the date of the notice denying the claim.

(b) Any appeal received by the CIWMB after 30 calendar days from the date of the adjustment letter from the CIWMB on an adjusted payment or the date of the notice denying the claim shall be denied without a hearing or consideration of the appeal.

(c) An approved recycler shall include all of the following information in a written appeal:

(1) The recycler's name and identification number from its proof of approval.

(2) The month(s) and year(s) in question.

(3) A copy of the recycling payment claim and the notice denying the claim, or a copy of the remittance advice if a payment adjustment is being appealed.

(4) An explanation of why the adjustment or denial was in error.

(5) Any other documentation that supports the appeal.

(d) At any time during the proceeding, before a final decision is issued, the CIWMB, with the consent of the petitioner, may refer the matter to mediation, or binding or non-binding arbitration, consistent with the provisions of Government Code Section 11420.10.

(e) The CIWMB shall provide a hearing before the executive director, or his or her designee, who shall act as a hearing officer. The hearing officer shall consider the claim, the reasons for payment denial or payment adjustment, and any additional relevant information presented by the claimant or CIWMB staff. The hearing officer shall issue a written decision stating the factual and legal basis for the decision.

(f) The CIWMB may adopt the decision as the final decision, or review all or a part of the decision at a hearing before the Board.

(g) The CIWMB will notify the recycler of the final determination in writing within 20 calendar days from the date on which Board adopts a final decision.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Section 42479, Public Resources Code; and Sections 11400.20 and 11415.10, Government Code.

HISTORY

1. New section filed 5-10-2004 as an emergency; operative 5-10-2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5-10-2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12-13-2004 as an emergency; operative 12-13-2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12-14-2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12-13-2004 order transmitted to OAL 10-13-2006 and filed 11-27-2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 2.4. Electronic Waste Payment System — Cancellation Methods, Recovery Payment Rate, and Combined Recovery and Recycling Payment Rate

§ 18660.32. Cancellation Methods.

(a) The CIWMB shall not pay recycling payment claims unless the cancellation method used meets the requirements of this Section.

(b) An approved recycler shall not use or propose cancellation methods that are inconsistent with any DTSC requirements for handling or otherwise processing CEWs.

(c) An approved recycler may use the following standard CEW cancellation methods that qualify for recycling payments as specified in the requirements of this Chapter:

(1) CRT or CRT-containing CEW cancellation through crushing or shredding.

(2) CRT or CRT-containing CEW cancellation through dismantling to a bare CRT after relieving the vacuum.

(3) Cancellation of non-CRT-containing CEWs through crushing/shredding of the entire CEW.

(4) Cancellation of non-CRT-containing CEWs through dismantling to a bare panel.

(d) An approved recycler may submit proposals for alternative cancellation methods to the CIWMB for review on a case-by-case basis. The CIWMB, in consultation with DTSC, shall act within 180 calendar days to disapprove an alternative method, approve an alternative method for use only by the requesting recycler, or approve an alternative method for use by all recyclers.

(e) An approved recycler shall not claim, and the CIWMB shall not pay, recycling payments for CEWs "cancelled" with an alternative method unless the CIWMB has previously approved the alternative method. The CIWMB shall deny payment on any CEWs "cancelled" with an alternative method prior to CIWMB approval.

(f) Reuse of either an intact CEW or of a partially disassembled CEW, such as a CRT with an attached yoke, is not cancellation and is not eligible for recycling payments.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New article 2.4 (sections 18660.32-18660.35) and section filed 5-10-2004 as an emergency; operative 5-10-2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5-10-2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 2.4 (sections 18660.32-18660.34) and section filed 12-13-2004 as an emergency; operative 12-13-2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12-14-2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12-13-2004 order, including amendment of section, transmitted to OAL 10-13-2006 and filed 11-27-2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.33. Standard Statewide Recovery Payment Rate.

(a) An approved recycler shall pay an approved collector the Standard Statewide Combined Recovery Payment Rate for all CEWs transferred to the recycler that are accompanied by applicable source documentation pursuant to Section 18660.20(h) of this Chapter regardless of the real or anticipated disposition of the CEWs.

(b) Beginning July 1, 2008, the Standard Statewide Recovery Payment Rate is $0.16 per pound.

(c) The CIWMB shall review the Standard Statewide Recovery Payment Rate at a public meeting of the Board and establish the rate pursuant to Section 42477 of the Public Resources Code.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5-10-2004 as an emergency; operative 5-10-2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5-10-2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12-13-2004 as an emergency; operative 12-13-2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12-14-2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12-13-2004 order, including amendment of section, transmitted to OAL 10-13-2006 and filed 11-27-2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).
4. Amendment of subsection (b) filed 6-23-2008; operative 7-1-2008. Amendment filed without review by OAL pursuant to the exemption for regulations which establish or fix rates, prices, or tariffs (Government Code section 11340.9(g)) (Register 2008, No. 26).

§ 18660.34. Standard Statewide Combined Recovery and Recycling Payment Rate.

(a) The CIWMB shall pay an approved recycler the Standard Statewide Combined Recovery and Recycling Payment Rate for the weight of CEWs cancelled and claimed pursuant to the requirements of this Chapter, which includes a component for recovery costs and a component for recycling costs.

(b) Beginning July 1, 2008 and ending on September 15, 2008 the Standard Statewide Combined Recovery and Recycling Payment Rate is $0.43 per pound.

(c) Beginning September 16, 2008, the Standard Statewide Combined Recovery and Recycling Payment Rate is $0.39 per pound.

(d) The CIWMB shall review the Standard Statewide Recovery and Recycling Payment Rate at a public meeting of the Board and establish

the rate pursuant to Sections 42477 and 42478 of the Public Resources Code.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).
4. Amendment of subsection (b), new subsection (c) and subsection relettering filed 6–23–2008; operative 7–1–2008. Amendment filed without review by OAL pursuant to the exemption for regulations which establish or fix rates, prices, or tariffs (Government Code section 11340.9(g)) (Register 2008, No. 26).

Article 2.5. Electronic Waste Payment System — Manufacturer Payments

§ 18660.35. Manufacturer Registration.

(a) A manufacturer may apply to become registered, to renew an existing registration, or to revise an existing registration at any time by submitting a complete application.

(b) In an application for registration, manufacturers shall provide the following general information:

(1) Name of manufacturer.

(2) Mailing address and physical address.

(3) Name of the employee or officer of the manufacturer who is the contact person.

(4) Telephone number(s) of the contact person.

(5) An e–mail address of the contact person.

(6) Name of the employee or officer of the manufacturer who is the primary applicant authorized to sign:

(A) Payment claims.

(B) Reports.

(C) Other payment–related documentation and/or correspondence required by the CIWMB.

(7) Name of the employee or officer of the manufacturer (if any), in addition to the primary applicant, who is authorized to sign:

(A) Payment claims.

(B) Reports.

(C) Other–payment related documentation and/or correspondence required by the CIWMB.

(8) An indication of whether the manufacturer wishes to be included in an on–line registry.

(9) The location in which the records required by this Chapter will be maintained.

(c) In an application for registration, a manufacturer shall also include the following information about its take back program or activities, including but not limited to:

(1) The types of California sources from which the manufacturer may take back CEWs, including but not limited to households, businesses, and/or other collectors.

(2) The type(s) of CEWs that the manufacturer may take back for recycling.

(3) The mechanism(s) by which the manufacturer will accept CEWs into the take back program, such as mail–in, drop–off, trade–in, or pick–up.

(4) Any conditions the manufacturer may place on accepting CEWs.

(5) Whether the manufacturer may recover for the purposes of recycling discarded electronic devices similar to CEWs from outside of the State of California.

(d) In an application for registration, a manufacturer shall also include the following information regarding the recycling of the CEWs received into its take back program:

(1) The name and address of the recycling facility(ies) used by the manufacturer.

(2) A description of the recycling operation used by the manufacturer, including the recycling process that results in cancellation as specified in Section 18660.32 of this Chapter or an equivalent result.

(e) In an application for registration, a manufacturer shall make the following certification statements:

(1) "The undersigned manufacturer agrees under penalty of immediate revocation of registration and denial of manufacturer payments that as an registered manufacturer:"

(A) "I shall ensure that any CEWs for which payment is claimed originate from a California source."

(B) "I shall only claim payment for those CEWs that I take back and process for recycling."

(C) "I shall operate in compliance with the requirements of this Chapter, the Act and with all applicable local, state and federal regulatory provisions."

(2) "The undersigned manufacturer certifies under penalty of perjury under the laws of the State of California that the information provided herein is true and correct."

(A) The name and signature of the primary applicant who has the authority to sign and bind the manufacturer to this application.

(B) The date and location of application execution.

(f) In an application for registration, a manufacturer shall submit a completed "Payee Data Record" STD. 204 Form (Rev. 6–2003 or as revised) — Department of Finance, State of California with an original signature of the primary applicant. The form will be provided by the CIWMB and is hereby incorporated by reference.

(g) Within 30 calendar days upon receipt of the application for registration, the CIWMB will notify the manufacturer if the applicant is a registered manufacturer and provide a registration number to be used in all correspondence and claims.

(h) A registered manufacturer's registration remains valid for 2 years following the date of registration provided that the information in the original application remains unchanged and the manufacturer continues to meet and fulfill the requirements of this Chapter.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a) and 42476, Public Resources Code.

HISTORY

1. New section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. New article 2.5 (sections 18660.35–18660.39) and repealer and new section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.36. Requirements for a Registered Manufacturer.

(a) Upon registration with the CIWMB, a registered manufacturer may claim manufacturer payments for those CEWs received by the manufacturer's take back program after the effective date of registration and processed for recycling as specified in Section 18660.6(i)(3) of this Chapter.

(b) A registered manufacturer shall determine if CEWs received by the manufacturer's take back program and processed for recycling are from California sources or from non–California sources and shall keep track of those materials separately.

(c) A registered manufacturer shall not request payment for non–California CEWs.

(d) A registered manufacturer shall not request payment for previously cancelled CEWs.

(e) A registered manufacturer shall ensure that any CEW on which the manufacturer has claimed manufacturer payment does not enter the recovery and recycling payment system.

(f) The recycling operation used by a registered manufacturer shall operate in accordance with all Federal, State and local laws and regulations.

(g) In addition to the general record keeping requirements in Section 18660.8 of this Chapter, a registered manufacturer shall obtain and maintain the following records:

(1) A written description of the take back program, including the type of consumers from whom CEWs are accepted for take back.

(2) A record of the number of CEWs collected by the product categories defined in Section 18660.5(a)(32) of this Chapter.

(3) Records of transfers by load to the recycling operation used by the registered manufacturer, including signed and dated receipts showing the weight and number of CEWs transferred.

(4) Written description of any activity, such as packaging and consolidation, which explains any discrepancy between the CEWs received through the take back program and the CEWs transferred to the recycling operation used by the manufacturer.

(5) Records showing any CEWs received through the take back program that are reused, repaired, refurbished or otherwise returned to use.

(6) Records showing any CEWs received through the take back program that are transferred to another entity without being processed for recycling.

(7) Records showing the processing for recycling of CEWs by number, screen size, weight, date and recycling method that results in cancellation as specified in Section 18660.32 of this Chapter or an equivalent result.

(8) Complete records of all claims, attachments and supporting documentation for all recycling payment claims made to the CIWMB.

(h) A registered manufacturer shall measure, record and report weights in pounds. A registered manufacturer shall weigh CEWs and/or treatment residuals on a scale or other device approved, tested and sealed in accordance with Division 5 of the Business and Professions Code (Weights and Measures) or in accordance with comparable standards of the state in which the registered manufacturer is located.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476 and 42479, Public Resources Code.

HISTORY

1. New section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
2. Amendment of subsection (g)(2) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 and 12–2–2005 orders, including further amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.37. Manufacturer Payment Claims.

(a) A registered manufacturer shall base a manufacturer payment claim on the number of CEWs processed for recycling by screen size(s) as listed in Section 42464(a) of the Public Resources Code.

(b) A registered manufacturer shall submit all of the following general information in a claim for manufacturer payments from the CIWMB:

(1) The full name, mailing address, registration number, and federal tax identification number of the registered manufacturer preparing the claim.

(2) The name and phone number of a contact person for purposes of the claim.

(3) The period of time covered by the claim and date of preparation of the claim.

(4) The number of CEW devices claimed:

(A) In each product category as defined in Section 18660.5(a)(32).

(B) By screen size as listed in Section 42464(a) of the Public Resources Code.

(5) The total monetary amount being claimed, as calculated in subsection (f) of this Section.

(6) The signature and title of a person with signature authority for payment claims as designated pursuant to Section 18660.35(b)(6) or (7) of this Article. The signature block shall include the following certification statements:

(A) "I hereby declare under penalty of perjury that:"

1. "All claimed CEWs were received from California sources through the manufacture take back program described in the manufacturer registration."

2. "All claimed CEWs have been processed for recycling in a manner that results in cancellation as specified in Section 18660.32 of this Chapter or an equivalent result."

3. "No claimed CEWs were transferred into the recovery and recycling payment system."

4. "I have certified the number of devices and verified the calculations."

5. "This payment claim, including any and all accompanying documents, has been examined by me and is true, correct and complete."

6. "I understand that errors or omissions on my part may result in the CIWMB delaying or denying payment"

7. "I further understand that fraud could result in revocation of the manufacturer registration."

(7) The date and place the claim was signed.

(c) A registered manufacturer shall submit no more than one payment claim per calendar month.

(d) The claim period for a manufacturer payment claim pursuant to this Section is the time period within which processing occurs and may not exceed three (3) months.

(e) A registered manufacturer shall attach all of the following to the payment claim:

(1) A written description of take back program that collected the CEWs for which payment is being claimed, including the type of consumers from whom CEWs were accepted, and a record of the number of CEWs collected by the product categories as defined in Section 18660.5(a)(32) of this Chapter.

(2) Records of transfers by load to the registered manufacturer's recycling operation, including signed and dated receipts showing the weight and number of CEWs transferred.

(3) Written description of any activity, such as packaging and consolidation, which explains any discrepancy between the CEWs received through the take back program and the CEWs transferred to the manufacturer's recycling operation.

(4) Records showing any CEWs received through the take back program that are reused, repaired, refurbished or otherwise returned to use.

(5) Records showing any CEWs received through the take back program that are transferred to another entity without being processed for recycling.

(6) Records showing the processing for recycling of CEWs by number, screen size, weight, date and recycling method that results in cancellation as specified in Section 18660.32 of this Chapter or an equivalent result.

(f) A registered manufacturer shall calculate the payment and include the calculation in a manufacturer payment claim as follows:

(1) The total number of CEWs, by screen size as specified in Section 42464(a) of the Public Resources Code, that are processed for recycling during the claim period.

(2) The total payment claimed, calculated by:

(A) Multiplying the number of CEWs in each screen size category by the value of the covered electronic waste recycling fee that applies to that category.

(B) Adding the calculations in (A) above for each screen size category calculation together.

(g) An example calculation for a manufacturer claim is included for illustration purposes as follows:

The number CEWs processed for recycling by screen size:

100 devices with less than 15 inch screen size	*100 devices*
Times the covered electronic waste recycling fee for category	*x $6.00*
	$600.00
200 devices greater than or equal to 15 inch screen size but less than 35 inch screen size	*200 devices*
Times the covered electronic waste recycling fee for category	*x $8.00*
	$1600.00

Equals the payment claim for the claim period: ($600.00+$1600.00)= $2200.00 Total Claim

(h) A registered manufacturer shall deliver manufacturer payment claims to the CIWMB's main business office, to the attention of the Accounting Section. A registered manufacturer shall mark the outside of the package containing the claims clearly with "e–Waste Claim Enclosed."

(i) A registered manufacturer shall submit timely manufacturer payment claims so that the CIWMB receives each claim within 45 days of the end of the claim period. The CIWMB may return without payment any claim received more than 45 days after the end of the claim period. The CIWMB shall determine a claim's receipt as either the date of the postmark on the claim package, or the date the claim package was physically received by the CIWMB, whichever is earlier.

(j) The CIWMB may reject a claim if it fails to comply with the requirements of this Section.

(k) The CIWMB's rejection of a manufacturer payment claim shall not extend any applicable due date or time period.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a), 42476 and 42479, Public Resources Code.

HISTORY

1. New section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
2. Amendment of subsections (b)(4)(A) and (e)(1) filed 12–2–2005 as an emergency; operative 12–2–2005 (Register 2005, No. 48). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.38. CIWMB Review of Manufacturer Payment Claims.

(a) The CIWMB shall review a manufacturer payment claim and determine if a manufacturer payment is due pursuant to this Chapter. If the CIWMB has cause to investigate any aspect of a claim, the review will be extended until resolution of all issues aspects under investigation.

(b) The CIWMB may deny payment for any of the following reasons:

(1) The CIWMB determines that:

(A) The signature on the claim is not that of a person with signature authority for registered manufacturer payment claims as designated pursuant to Section 18660.35(b)(6) or (7) of this Article.

(B) The registered manufacturer did not have current registration for the claim period.

(C) The registered manufacturer failed to meet the requirements in this Chapter or committed an activity prohibited in this Chapter.

(D) The payment claim contains a numerical discrepancy between values or calculations reported on the claim and the CIWMB verified values and calculations.

(2) The CIWMB has prevailed against the claimant in a civil or administrative action and money is owed to the CIWMB as a result of the action.

(3) The CIWMB discovers, as part of an application review, claim review or an audit, significant inconsistencies or fraud.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42475(a) and 42476, Public Resources Code.

HISTORY

1. New section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
2. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

§ 18660.39. Appeal of Denied or Adjusted Manufacturer Payment Claims.

(a) A registered manufacturer may file a formal appeal by writing to the CIWMB within 30 calendar days of the warrant date of an adjusted payment or the date of the notice denying the claim.

(b) Any appeal received by the CIWMB after 30 calendar days from the date of the adjustment letter from the CIWMB on an adjusted payment or the date of the notice denying the claim shall be denied without a hearing or consideration of the appeal.

(c) A registered manufacturer shall include all of the following information in a written appeal:

(1) The registered manufacturer's name and registration.

(2) The month(s) and year(s) in question.

(3) A copy of the manufacturer payment claim and the notice denying the claim, or a copy of the remittance advice if a payment adjustment is being appealed.

(4) An explanation of why the adjustment or denial was in error.

(5) Any other documentation that supports the appeal.

(d) At any time during the proceeding, before a final decision is issued, the CIWMB, with the consent of the petitioner, may refer the matter to mediation, or binding or non–binding arbitration, consistent with the provisions of Government Code Section 11420.10.

(e) The CIWMB shall provide a hearing before the executive director, or his or her designee, who shall act as a hearing officer. The hearing officer shall consider the claim, the reasons for payment denial or payment adjustment, and any additional relevant information presented by the claimant or CIWMB staff. The hearing officer shall issue a written decision stating the factual and legal basis for the decision.

(f) The CIWMB may adopt the decision as the final decision, or review all or a part of the decision at a hearing before the Board.

(g) The CIWMB will notify the registered manufacturer of the final determination in writing within 20 calendar days from the date on which Board adopts a final decision.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Section 42476, Public Resources Code; and Sections 11400.20 and 11415.10, Government Code.

HISTORY

1. New section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
2. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 3. Manufacturer Reporting

§ 18660.41. Reporting Requirements.

Each manufacturer as defined by Section 42463(n) of the Public Resources Code shall submit an annual report to the CIWMB on or before July 1, 2005, and annually thereafter, for the period of the previous calendar year. Each manufacturer shall report information by brand name of covered electronic devices sold in the state.

(a) The report shall include the following:

(1) Name and address of the manufacturer; and name, address, phone number, and email address for a contact person of the manufacturer.

(2) The information elements, as described in Section 42465.2 of the Public Resources Code and specified in Sections 18660.41(b) through (f), below.

(b) The sales reporting shall include:

(1) Data on the number of covered electronic devices sold in the state by product category.

(2) An explanation of the methodology used to estimate data.

(c) The materials reporting shall include:

(1) An estimated average amount in milligrams for mercury, cadmium, lead, hexavalent chromium, including their alloys and compounds, and PBBs used in covered electronic devices, and all their component parts by product category.

(2) Estimates may be based on either physical testing or maximum tolerance levels of the material in product design specifications.

(3) An explanation of the methodology used to estimate data.

(d) Recyclable content reporting shall include:

(1) Estimates on the amount in tons of recyclable content materials (e.g., plastics, glass, and metals) contained in covered electronic devices;

(2) The increase from the previous year in the use of recyclable content materials; and

(3) An explanation of the methodology used to estimate recyclable content.

(e) Design for recycling reporting shall include:

(1) Information on current activities and future plans related to the design of covered electronic devices, including but not limited to, the following:

(A) Ease of disassembly of covered electronic devices;

(B) Identification of resin types; and

(C) Improved materials efficiency through reduction in hazardous materials use or other approaches.

(f) List of retailers noticed pursuant to Section 42465.2(a)(1)(E) of the Public Resources Code shall include:

(1) The contact information used by the manufacturer to perform the notice, such as the name, address, contact person, phone number and/or email address of the retailer to which the notice was made.

(2) The list of covered products contained in the notice.

(g) Manufacturers shall individually submit to the CIWMB samples of the consumer information and description of all methods used to comply with Section 18660.42 of this Chapter. Manufacturers shall submit this information at the same time they comply with Section 18660.41(a) through (e), above.

(h) Each manufacturer shall maintain the report and all supporting documentation for three years after the report is submitted. If the CIWMB or DTSC requests a copy of the supporting documentation the manufacturer shall submit the supporting documentation within 10 days of the request.

(i) Each manufacturer shall provide a certification under penalty of perjury that the information is true and correct.

(j) Collective reporting — Compliance with the reporting required in Sections 18660.41(b) through (f), above, is the individual responsibility of each manufacturer. A manufacturer may comply with the reporting requirements in subsections (b) and (c), above, by submitting a collective report for the subsections containing sales and materials information, if the following conditions are met:

(1) A collective report must contain all of the information required in Sections 18660.41(b) and (c), above, but may combine the information for those manufacturers submitting information for the collective report;

(2) The collective report shall contain a list of all manufacturers whose reports are included in the collective report. This list shall include the name of the manufacturer and address of the manufacturer; and name, address, phone number, and email address for a contact person of the manufacturer;

(3) Each manufacturer shall provide a certification under penalty of perjury that the information provided for the collective report is true and correct; and

(4) Notwithstanding Section 18660.41(j)(1) through (3), above, the CIWMB may request, on a case–by–case basis, a manufacturer to submit an individual report with the information required in Sections 18660.41(b) and (c), above, and all supporting documentation of the information contained in the report. In response to CIWMB's request, the manufacturer shall submit an individual report and supporting documentation within ten days of receiving the CIWMB's request.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Section 42465.2, Public Resources Code.

HISTORY

1. New article 3 (section 18660.41) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 3 (section 18660.41) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order, including amendment of section, transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 4. Consumer Information Required of a Manufacturer

§ 18660.42. Requirements.

A manufacturer shall do the following:

(a) Make the consumer information required by Section 42465.2(a)(2) of the Public Resources Code available in English and Spanish; and

(b) If a manufacturer uses a centralized database or Internet site to meet the requirement in (a), the manufacturer must maintain the databases or Internet site for their accuracy.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Section 42465.2, Public Resources Code.

HISTORY

1. New article 4 (section 18660.42) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new article 4 (section 18660.42) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.
3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Article 5. Confidential, Proprietary and Trade Secret Information

§ 18660.43. Requirements.

The protection from disclosure of information or the disclosure of information submitted to the CIWMB by a collector, a recycler, or a manufacturer of covered electronic devices, pursuant to this Chapter, shall be governed by the standards adopted by the Board found at Sections 17041 through 17046, of this Title.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code. Reference: Sections 42465.2(c) and 42475(c), Public Resources Code

HISTORY

1. New article 5 (section 18660.43) and section filed 5–10–2004 as an emergency; operative 5–10–2004 (Register 2004, No. 20). Pursuant to Public Resources Code section 42475.2(b) a Certificate of Compliance must be transmitted to

OAL by 5–10–2006 or emergency language will be repealed by operation of law on the following day.

2. Repealer and new article 5 (section 18660.43) and section filed 12–13–2004 as an emergency; operative 12–13–2004 (Register 2004, No. 51). Pursuant to Public Resources Code section 42475.2(b), emergency language will be repealed by operation of law on 12–14–2006. A Certificate of Compliance must be transmitted to and approved by OAL prior to that day.

3. Certificate of Compliance as to 12–13–2004 order transmitted to OAL 10–13–2006 and filed 11–27–2006 pursuant to Public Resources Code section 42475.2(b) (Register 2006, No. 48).

Chapter 9. Planning Guidelines and Procedures for Preparing and Revising Countywide Integrated Waste Management Plans

(Ed. Note: For prior history see Register 89, No. 1 and 83, No. 6)

Article 3. Definitions

§ 18700. Authority.

NOTE: Authority cited: Section 66790, Government Code. Reference: Section 66796.22, Government Code.

HISTORY

1. New chapter 9 (sections 18700–18752, not consecutive) filed 11–27–78; effective thirtieth day thereafter (Register 78, No. 47).
2. Repealer of chapter 9 (articles 1–6, sections 18700–18752, not consecutive) filed 2–3–83; effective thirtieth day thereafter (Register 83, No. 6). For prior history, see Register 79, No. 23.
3. Editorial correction restoring HISTORY of section 18700 (Register 91, No. 26).
4. Amendment of chapter heading filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
5. Amendment of chapter heading filed 7–22–94; operative 8–22–94 (Register 94, No. 29)

[The next page is 806.89.]

6. Reinstatement of chapter heading as it existed prior to 3–31–94 emergency amendment filed 7–31–97 by operation of Government Code section 11346.1(g) (Register 97, No. 31).

§ 18720. Definitions.

(a) The following definitions shall apply to the regulations contained in this chapter.

(1) Agricultural wastes.

"Agricultural wastes" means solid wastes of plant and animal origin, which result from the production and processing of farm or agricultural products, including manures, orchard and vineyard prunings, and crop residues, which are removed from the site of generation for solid waste management. Agricultural refers to SIC Codes 011 through 0291.

(2) Aluminum can or aluminum container.

"Aluminum can" or "aluminum container" means any food or beverage container that is composed of at least 94% aluminum.

(3) Asbestos.

"Asbestos" means fibrous forms of various hydrated minerals, including chrysotile (fibrous serpentine), crocidolite (fibrous reibecktite), amosite (fibrous cummingtonite–grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.

(4) Ash.

"Ash" or "ashes" means the residue from the combustion of any solid or liquid material.

(5) Bi–metal container.

"Bi–metal container" means any metal container composed of at least two different types of metals, such as a steel container with an aluminum top.

(6) Best readily available and applicable data or representative data.

"Best readily available and applicable data" or "representative data" means information that is available to a jurisdiction from published sources, field sampling, the Board, or other identifiable entities which is the most current data and which addresses the situation being examined.

(7) Buy–back recycling center.

"Buy–back recycling center" means a facility which pays a fee for the delivery and transfer of ownership to the facility of source separated materials, for the purpose of recycling or composting.

(8) Capital costs.

"Capital costs" means those direct costs incurred in order to acquire real property assets such as land, buildings and building additions; site improvements; machinery; and equipment.

(9) Commercial solid wastes.

"Commercial solid waste" means solid waste originating from stores, business offices, commercial warehouses, hospitals, educational, health care, military, and correctional institutions, non–profit research organizations, and government offices. Commercial solid waste refers to SIC Codes 401 through 4939, 4961, and 4971 (transportation, communications and utilities), 501 through 5999 (wholesale and retail trade), 601 through 679 (finance, insurance and real estate), 701 through 8748 (public and private service industries such as hospitals and hotels), and 911 through 9721 (public administration). Commercial solid wastes do not include construction and demolition waste.

(10) Commercial unit.

"Commercial unit" means a site zoned for a commercial business and which generates commercial solid wastes.

(11) Composition.

"Composition" means a set of identified solid waste materials, categorized into waste categories and waste types pursuant to sections 18722(i) and (j) of article 6.1 of this chapter.

(12) Composting.

"Composting" means a method of waste treatment which produces a product meeting the definition of "compost" in Public Resources Code section 40116.

(13) Composting facility.

"Composting facility" means a permitted solid waste facility at which composting is conducted and which produces a product meeting the definition of "compost" in Public Resources Code section 40116.

(14) Construction and demolition waste.

"Construction and demolition waste" includes solid wastes, such as building materials; and packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings, and other structures. Construction refers to SIC Codes 152 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795.

(15) Corrugated Container.

"Corrugated container" means a paperboard container fabricated from two layers of kraft linerboard sandwiched around a corrugating medium. Kraft linerboard means paperboard made from wood pulp produced by a modified sulfate pulping process, with basis weight ranging from 18 to 200 pounds, manufactured for use as facing material for corrugated or solid fiber containers. Linerboard also may mean that material which is made from reclaimed paper stock. Corrugating medium means paperboard made from chemical or semichemical wood pulps, straw or reclaimed paper stock, and folded to form permanent corrugations. Corrugated container refers to SIC Code 2653.

(16) Cost–effective.

"Cost–effective" means a measurement of cost compared to an unvalued output (e.g., the cost per ton of solid waste collected) such that the lower the cost, the more cost–effective the action.

(17) Disposal.

"Disposal" means the management of solid waste through landfilling or transformation at permitted solid waste facilities.

(18) Disposal capacity.

"Disposal capacity" means the capacity, expressed in either weight in tons or its volumetric equivalent in cubic yards, which is either currently available at a permitted solid waste landfill, or will be needed for the disposal of solid waste generated within the jurisdiction over a specified period of time.

(19) Diversion Alternative.

"Diversion alternative" means any activity, existing or occurring in the future, which has been, is, or will be implemented by a jurisdiction which could result in or promote the diversion of solid waste, through source reduction, recycling or composting, from solid waste landfills and transformation facilities.

(20) Drop–off recycling center.

"Drop–off recycling center" means a facility which accepts delivery or transfer of ownership of source separated materials for the purpose of recycling or composting, without paying a fee. Donation of materials to collection organizations, such as charitable groups, is included in this definition.

(21) Durability.

"Durability" means the ability of a product to be used for its intended purpose for a period greater than the mean useful product life span of similar products.

(22) End market or end use.

"End market" or "end use" means the use or uses of a diverted material or product which has been returned to the economic mainstream, whether or not this return is through sale of the material or product. The material or product can have a value which is less than the solid waste disposal cost.

(23) Feasible.

"Feasible" means that a specified program, method, or other activity can, on the basis of cost, technical requirements and time frame for accomplishment, be undertaken to achieve the objectives and tasks identified by a jurisdiction in a Countywide Integrated Waste Management Plan.

(24) Ferrous metals.

"Ferrous metals" means any iron or steel scrap which has an iron content sufficient for magnetic separation.

(25) Food waste.

"Food waste" means all animal and vegetable solid wastes generated by food facilities, as defined in California Health and Safety Code section 27521, or from residences, that result from the storage, preparation, cooking, or handling of food.

(26) Hazard.

"Hazard" means having one or more of the characteristics that cause a substance or combination of substances to qualify as a hazardous material, as defined by section 66084 of title 22 of the California Code of Regulations.

(27) Household hazardous waste.

"Household hazardous wastes" are those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

(28) Household hazardous waste collection.

"Household hazardous waste collection" means a program activity in which household hazardous wastes are brought to a designated collection point where the household hazardous wastes are separated for temporary storage and ultimate recycling, treatment, or disposal.

(29) Implementation.

"Implementation" means the accomplishment of the program tasks as identified in each component required by section 18733 of this chapter.

(30) Industrial solid waste.

"Industrial solid waste" means solid waste originating from mechanized manufacturing facilities, factories, refineries, construction and demolition projects, and publicly operated treatment works, and/or solid wastes placed in debris boxes.

(31) Industrial unit.

"Industrial unit" means a site zoned for an industrial business and which generates industrial solid wastes.

(32) Inert solids or inert waste.

"Inert solids" or "inert waste" means a non–liquid solid waste including, but not limited to, soil and concrete, that does not contain hazardous waste or soluble pollutants at concentrations in excess of water–quality objectives established by a regional water board pursuant to division 7 (commencing with section 13000) of the California Water Code and does not contain significant quantities of decomposable solid waste.

(33) Jurisdiction.

"Jurisdiction" means the city or county responsible for preparing any one or all of the following: the Countywide Integrated Waste Management Plan, or the Countywide Siting Element, or the Source Reduction and Recycling Element.

(34) Marine wastes.

"Marine wastes" means solid wastes generated from marine vessels and ocean work platforms, solid wastes washed onto ocean beaches, and litter discarded on ocean beaches.

(35) Market development.

"Market development" means a method of increasing the demand for recovered materials so that end markets for the materials are established, improved or stabilized and thereby become more reliable.

(36) Materials recovery facility.

"Materials recovery facility" means a permitted solid waste facility where solid wastes or recyclable materials are sorted or separated, by hand or by use of machinery, for the purposes of recycling or composting.

(37) Medium–term planning period.

"Medium–term planning period" means a period beginning in the year 1996 and ending in the year 2000.

(38) Mixed paper.

"Mixed paper" means a waste type which is a mixture, unsegregated by color or quality, of at least two of the following paper wastes: newspaper, corrugated cardboard, office paper, computer paper, white paper, coated paper stock, or other paper wastes.

(39) Model component format.

"Model component format" means that format described in sections 18733.1 through 18733.6 of article 6.2 of this chapter which shall be used for preparation of several of the individual components of a SRR Element.

(40) Municipal solid waste or MSW.

"Municipal solid waste" or "MSW" means all solid wastes generated by residential, commercial, and industrial sources, and all solid waste generated at construction and demolition sites, at food–processing facilities, and at treatment works for water and waste water, which are collected and transported under the authorization of a jurisdiction or are self–hauled. Municipal solid waste does not include agricultural crop residues (SIC Codes 071 through 0724, 0751), animal manures (SIC Code 0751), mining waste and fuel extraction waste (SIC Codes 101 through 1499), forestry wastes (SIC Codes 081 through 0851, 2411 and 2421), and ash from industrial boilers, furnaces and incinerators.

(41) Non–ferrous metals.

"Non–Ferrous metals" means any metal scraps that have value, and that are derived from metals other than iron and its alloys in steel, such as aluminum, copper, brass, bronze, lead, zinc and other metals, and to which a magnet will not adhere.

(42) Non–recyclable paper.

"Non–recyclable paper" means discarded paper which has no market value because of its physical or chemical or biological characteristics or properties.

(43) Non–renewable resource.

"Non–renewable resource" means a resource which cannot be replenished, such as those resources derived from fossil fuels.

(44) Normally disposed of.

"Normally disposed of" refers to those waste categories and waste types which:

1) have been demonstrated by the Solid Waste Generation Study, conducted pursuant to section 18722 of this chapter, to constitute at least 0.001% of the total weight of solid wastes disposed in a solid waste stream attributed to the jurisdiction as of January 1, 1990;

2) which are deposited at permitted solid waste landfills or transformation facilities subsequent to any recycling or composting activities at those solid waste facilities; and

3) which are allowed to be considered in the establishment of the base amount of solid waste from which source reduction, recycling, and composting levels shall be calculated, pursuant to the limitations listed in Public Resources Code section 41781(b).

(45) Old newspaper.

"Old newspaper" means any newsprint which is separated from other types of solid waste or collected separately from other types of solid waste and made available for reuse and which may be used as a raw material in the manufacture of a new paper product.

(46) Operational costs.

"Operational costs" means those direct costs incurred in maintaining the ongoing operation of a program or facility. Operational costs do not include capital costs.

(47) Organic waste.

"Organic waste" means solid wastes originated from living organisms and their metabolic waste products, and from petroleum, which contain naturally produced organic compounds, and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide, and other simpler organic compounds.

(48) Other plastics.

"Other plastics" means all waste plastics except polyethylene terephthalate (PET) containers, film plastics, and high density polyethylene (HDPE) containers.

(49) Permitted capacity.

"Permitted capacity" means that volume in cubic yards or weight in tons which a solid waste facility is allowed to receive, on a periodic basis, under the terms and conditions of that solid waste facility's current Solid

Waste Facilities Permit issued by the local enforcement agency and concurred in by the California Integrated Waste Management Board.

(50) Permitted landfill.

"Permitted landfill" means a solid waste landfill for which there exists a current Solid Waste Facilities Permit issued by the local enforcement agency and concurred in by the California Integrated Waste Management Board, or which is permitted under the regulatory scheme of another state.

(51) Permitted solid waste facility.

"Permitted solid waste facility" means a solid waste facility for which there exists a Solid Waste Facilities Permit issued by the local enforcement agency and concurred in by the California Integrated Waste Management Board, or which is permitted under the regulatory scheme of another state.

(52) Plan or Countywide Integrated Waste Management Plan.

"Plan" or "Countywide Integrated Waste Management Plan" means the Countywide Integrated Waste Management Plan as defined in section 41750 of the Public Resources Code.

(53) Program.

"Program" means the full range of source reduction, recycling, composting, special waste, or household hazardous waste activities undertaken by or in the jurisdiction or relating to management of the jurisdiction's waste stream to achieve the objectives identified in the Source Reduction, Recycling, Composting, and Special Waste components, and Household Hazardous Waste Element, respectively.

(54) Purchase preference.

"Purchase preference" means a preference provided to a wholesale or retail commodity dealer which is based upon the percentage amount that the costs of products made from recycled materials may exceed that of similar non-recycled products and still be deemed the lowest bid.

(55) Rate structure.

"Rate structure" means that set of prices established by a jurisdiction, special district (as defined in Government Code section 56036), or other rate setting authority to compensate the jurisdiction, special district or rate setting authority for the partial or full costs of the collection, processing, recycling, composting, and/or transformation or landfill disposal of solid wastes.

(56) Recovered material.

"Recovered material" means material which has been retrieved or diverted from disposal or transformation for the purpose of recycling, re-use or composting. "Recovered material" does not include those materials generated from and reused on site for manufacturing purposes.

(57) Region.

"Region" means the combined geographic area of two or more incorporated areas; two or more unincorporated areas; or any combination of incorporated and unincorporated areas.

(58) Repairability.

"Repairability" means the ability of a product or package to be restored to a working or usable state at a cost which is less than the replacement cost of the product or package.

(59) Residential solid waste.

"Residential solid waste" means solid waste originating from single-family or multiple family dwellings.

(60) Residential unit.

"Residential unit" means a site occupied by a building which is zoned for residential occupation and whose occupants generate residential solid wastes.

(61) Reusability.

"Reusability" means the ability of a product or package to be used more than once in its same form.

(62) Re-use.

"Re-use" means the use, in the same form as it was produced, of a material which might otherwise be discarded.

(63) Rubber.

"Rubber" means an amorphous polymer of isoprene derived from natural latex of certain tropical plants or from petroleum.

(64) Salvage.

"Salvage" means the controlled removal of solid waste materials at a permitted solid waste facility for recycling, re-use, composting, or transformation.

(65) Seasonal.

"Seasonal" means those periods of time during the calendar year which are identifiable by distinct cyclical patterns of local climate, demography, trade or commerce.

(66) Sewage sludge.

"Sewage sludge" means residual solids and semi-solids resulting from the treatment of waste water, but does not include waste water effluent discharged from such treatment processes.

(67) Short-term planning period.

"Short-term planning period" means a period beginning in the year 1991 and ending in the year 1995.

(68) SIC Code.

"SIC Code" means the standards published in the U.S. Standard Industrial Classification Manual (1987), which is herein incorporated by reference.

(69) Sludge.

"Sludge" means residual solids and semi-solids resulting from the treatment of water, waste water, and/or other liquids. Sludge includes sewage sludge and sludge derived from industrial processes, but does not include effluent discharged from such treatment processes.

(70) Solid Waste Generation Study.

"Solid Waste Generation Study" means the study undertaken by a jurisdiction to characterize its solid waste stream and comply with all the requirements of sections 18722, 18724, and 18726 of this chapter.

(71) Source Reduction and Recycling Element or SRR Element.

"Source Reduction and Recycling Element" or "SRR Element" means the source reduction and recycling element required pursuant to Public Resources Code sections 41000 and 41300.

(72) Source separated.

"Source separated" describes the segregation, by the generator, of materials designated for separate collection for some form of materials recovery or special handling.

(73) Special waste.

"Special waste" means any hazardous waste listed in section 66740 of title 22 of the California Code of Regulations, or any waste which has been classified as a special waste pursuant to section 66744 of title 22 of the California Code of Regulations, or which has been granted a variance for the purpose of storage, transportation, treatment, or disposal by the Department of Health Services pursuant to section 66310 of title 22 of the California Code of Regulations. Special waste also includes any solid waste which, because of its source of generation, physical, chemical or biological characteristics or unique disposal practices, is specifically conditioned in a solid waste facilities permit for handling and/or disposal.

(74) Statistically representative.

"Statistically representative" means those representative and random samples of units that are taken from a population sample, pursuant to the procedures given in appendix 1 of article 6.1 of this chapter. For the purposes of this definition, population sample includes, but is not limited to, a sample from a population of solid waste generation sites, solid waste facilities and recycling facilities, or a population of items of materials and solid wastes in a refuse vehicle load of solid waste.

(75) Tin can or tin container.

"Tin can" or "tin container" means any food or beverage container that is composed of steel with a tin coating.

(76) Ton.

"Ton" means a unit of weight in the U.S. Customary System of Measurement, an avoirdupois unit equal to 2,000 pounds. Also called short ton or net ton.

(77) Transformation facility.

"Transformation facility" means a facility whose principal function is to convert, combust, or otherwise process solid waste by incineration, pyrolysis, destructive distillation, or gasification, or to chemically or biologically process solid wastes, for the purpose of volume reduction, synthetic fuel production, or energy recovery. Transformation facility does not include a composting facility.

(78) Volume.

"Volume" means a three dimensional measurement of the capacity of a region of space or a container. Volume is commonly expressed in terms of cubic yards or cubic meters. Volume is not expressed in terms of mass or weight.

(79) Waste categories.

"Waste categories" means the grouping of solid wastes with similar properties into major solid waste classes, such as grouping together office, corrugated and newspaper as a paper waste category, as identified by the solid waste classification system contained in section 18722 of article 6.1 of this chapter, except where a component-specific requirement provides alternative means of classification.

(80) Waste diversion.

"Waste diversion" means to divert solid waste, in accordance with all applicable federal, state and local requirements, from disposal at solid waste landfills or transformation facilities through source reduction, recycling or composting.

(81) Waste generator.

"Waste generator" means any person, as defined by section 40170 of the Public Resources Code, whose act or process produces solid waste as defined in Public Resources Code section 40191, or whose act first causes solid waste to become subject to regulation.

(82) Waste type.

"Waste type" means identified wastes having the features of a group or class of wastes which are distinguishable from any other waste type, as identified by the waste classification system contained in section 18722 of article 6.1 of this chapter, except where a component-specific requirement provides alternative means of classification.

(83) White goods.

"White goods" means discarded, enamel-coated major appliances, such as washing machines, clothes dryers, hot water heaters, stoves and refrigerators.

(84) Wood waste.

"Wood waste" means solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, processing or storage of raw wood materials, or construction and demolition activities.

(85) Yard waste.

"Yard waste" means any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41000, 41300 and 41823, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY No. 2 (Register 91, No. 13).
4. Request for readoption of 7-6-90 emergency regulations approved by OAL 11-6-90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2-15-91 as an emergency; operative 2-15-91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-17-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-15-91 order, including amendment of subsections (a)(2), (9), (12), (13), (15), (19), (20), (22), (30), (33), (35), (36), (39), (40), (41), (44), (47), (48), (50), (51), (53), (54), (56), (64), (70), (74), and (80), transmitted to OAL on 4-29-91 and filed 5-29-91 (Register 91, No. 37).

Article 6.1. Solid Waste Generation Studies

§ 18722. Solid Waste Generation Studies—General Requirements.

(a) Relation to Waste Characterization Component. For the purposes of this Chapter, a solid waste generation study constitutes the waste characterization component of the SRR Element required by sections 41003, 41030, 41303 and 41330 of the Public Resources Code.

Each jurisdiction shall prepare an initial solid waste generation study and all subsequent solid waste generation studies in accordance with the requirements of this Article. Additional specific requirements and guidelines for the initial solid waste generation study are defined in Section 18724 of this Article.

(b) Regional and Joint Solid Waste Generation Studies.

Solid waste generation studies may be conducted by an individual jurisdiction for solid waste generated within that jurisdiction, or jointly by two or more jurisdictions for the solid waste generated within the participating jurisdictions.

(c) Solid Waste Generation Data Projections. All solid waste generation studies shall include a 15-year projection of the solid waste to be generated within the jurisdiction, and diverted and disposed by the jurisdiction. The projected time period shall commence from the date of the local adoption of a SRR Element. The projection is to include the amounts, waste categories and waste types generated, diverted from disposal, and disposed, for each year of the 15-year period, under (1) the solid waste management system conditions and diversion activities existing at the time that the Solid Waste Generation study is prepared, and under (2) the solid waste management system conditions expected to be realized after a jurisdiction's implementation of its SRR Element and its attainment of the statutory diversion mandates.

(1) Acceptable information sources which may be used by the jurisdiction to determine and project changes in population, or in governmental, residential, industrial, and commercial operations, shall be the following:

(A) documented population data available from the California Department of Finance;

(B) documented employment data available from the California State Employment Development Department;

(C) documented industrial and commercial operations data available from the California Department of Commerce or from the California State Employment Development Department;

(D) documented data available in a local jurisdiction's adopted current General Plan;

(E) documented data available from published reports of local associations of governments and chambers of commerce;

(F) documented data available from the U.S. Census Bureau;

(G) documented jurisdiction-specific demographic, economic, and solid waste data developed and published by a jurisdiction in the course of the preparation of its solid waste generation study.

(d) Annual Report on Solid Waste Generation.

The annual report on the implementation of the SRR Element, required pursuant to Section 41821 of the Public Resources Code, shall contain the jurisdiction's analysis of the need to revise its solid waste generation study, including the need to revise its data on the sources of generation, diversion and disposal, and its data on categories and types of solid waste generated, diverted and disposed.

(e) Uses of Solid Waste Generation Data.

Data obtained from a solid waste generation study shall be used to determine the total quantity of solid waste generated within the jurisdiction, and diverted and disposed, for purposes of identifying the quantities and

types of materials to be diverted from disposal pursuant to Sections 41780 and 41781 of the Public Resources Code.

(f) Measuring Solid Waste Quantity. In determining the aggregate quantity of solid waste generated, each jurisdiction shall use the following types of measurements: volume or weight. The conversion factors used to convert volume to weight, or weight to volume, shall be provided in the solid waste generation study and submitted to the Board in the SRR Element.

(1) Conversion Factors. The conversion factors used for measurement of the quantity of solid waste may be those from published sources and/or those derived from test measurements developed by a jurisdiction. A solid waste generation study shall cite all published sources of conversion factors used by a jurisdiction. For conversion factors derived from test measurements developed by a jurisdiction, a jurisdiction shall include in the solid waste generation study, a summary of the test measurement methods used. Conversion factors submitted by a jurisdiction are subject to approval by the Board at the time of the Board's consideration of approval of a jurisdiction's submitted SRR Element.

(A) By January 1, 1992, the Board shall complete a study and compile a list of acceptable conversion factors for each specific waste type listed in (j) of this section.

(2) Generation. For solid wastes sampled or estimated to be produced at the sources of generation, e.g., residential units and commercial units, or at solid waste transfer stations, the quantity of solid wastes generated shall be reported in weight. Data collected in terms of volume shall be converted to weight.

(3) Diversion. For solid wastes which are diverted from transformation and disposal facilities, and which are sampled by means of a quantitative field analysis at recycling, composting and solid waste reduction facilities, the quantities of solid wastes which are diverted by means of recycling, composting or source reduction shall be reported in weight. Data collected in terms of volume shall be converted to weight.

For solid wastes which are diverted from transformation and disposal facilities, and which are not sampled by means of a quantitative field analysis but which are estimated from existing records to be diverted from transformation or disposal facilities, the quantities of solid waste which are diverted by means of recycling, composting or source reduction shall be reported in weight. Data collected in terms of volume shall be converted to weight.

(4) Transformation and Disposal. For solid wastes sampled or estimated to be received at solid waste transformation facilities and solid waste disposal sites, the quantity of solid wastes disposed shall be reported in both volume and weight. For solid wastes disposed in permitted solid waste landfills the volume measurement shall be expressed in terms of in–place volume in the landfill, after compaction, as measured in a waste cell in the upper lift of a waste management unit excluding the volume of cover material in the cell. For the purposes of this section, cell is defined in Section 17225.9, of title 14 of the California Code of Regulations. For the purposes of this section, waste management unit is defined in Public Resources Code section 43000(a).

(A) When solid waste volumes are recorded as uncompacted solid wastes or solid wastes compacted in refuse vehicles or solid waste transfer trailers, a jurisdiction shall state the conversion factors used to convert these volumes to in–place volumes in the landfill. A solid waste generation study shall cite all published sources of conversion factors for solid waste volumes used by a jurisdiction.

(5) Mixed Loads. If a refuse collection vehicle chosen for sampling has a mixed load of solid waste that is collected from more than one source of generation, or from more than one jurisdiction, a weight or volume fraction (i.e., the quantity) arising from each source of generation or jurisdiction along the collection route shall be estimated. This estimation shall be proportionally based on the number of residential, commercial and industrial units from the solid waste collection route sampled, and/or on the weight or volume of the contents of each refuse container which is sampled at the source(s) of generation. Where the number of units, or weight or volume of each refuse container, are determined by a jurisdiction to be unavailable, a jurisdiction may use population estimates to proportionally allocate the origins of solid wastes.

(6) Weight to be Used for Compliance with Diversion Standards. The total weight of solid waste generated by a jurisdiction and diverted from disposal shall be the standard by which the Board shall measure a jurisdiction's compliance with the statutory diversion requirements of section 41780 of the Public Resources Code.

(g) Determination of Solid Waste Generation. The total solid waste generated by a jurisdiction shall be the sum of the total solid waste disposed, as quantified in the solid waste disposal characterization, plus the total solid waste diverted from permitted solid waste landfills and transformation facilities through any combination of existing source reduction, recycling, and composting programs, as quantified in the solid waste diversion characterization.

(1) The total quantity of solid waste disposed shall include only solid waste transformed or disposed in permitted solid waste transformation or disposal facilities. Solid wastes placed in illegal dumps or unpermitted landfills cannot be counted as a part of the total solid waste generated, for the purposes of the solid waste generation study.

(2) Expressed as an equation, the total solid waste generated by the jurisdiction shall be computed as follows:

$$GEN = DISP + DIVERT$$

where:

GEN = the total quantity of solid waste generated within the jurisdiction.

DISP = the total quantity of solid waste, generated within the jurisdiction, which is transformed or disposed in permitted solid waste facilities.

DIVERT = the total quantity of solid waste, generated within the jurisdiction, which is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

(h) Representative Sampling of Solid Waste. The solid waste generation study shall be performed in two (2) parts, consisting of:

(1) a representative determination of the composition and quantity of solid waste disposed within and by the jurisdiction, i.e., a waste disposal characterization, and,

(2) a representative determination of the composition and quantity of solid waste generated within the jurisdiction which is diverted from solid waste landfills and solid waste transformation facilities, i.e., a waste diversion characterization.

(A) A solid waste generation study shall be representative of all residential, commercial, industrial and other sources of waste generation in the jurisdiction. It shall also be representative of all solid waste source reduction, recycling, composting, transformation and disposal activities and facilities in the jurisdiction or used by the jurisdiction and its residents and businesses.

(i) Identification of Solid Waste Sources, Categories and Types. The solid waste generation study shall identify all significant sources of solid waste generated by a jurisdiction, identify all solid waste diversion programs and activities in a jurisdiction, all solid waste diversion facilities used by a jurisdiction which are either located in that jurisdiction or used by that jurisdiction, and identify all permitted solid waste transformation and disposal facilities used by a jurisdiction. The solid waste generation study shall identify solid wastes generated, diverted and disposed by volume and/or weight, according to the requirements of section 18722(f) of this article, and by waste category and waste type from the following sources of generation within the jurisdiction:

(A) residential
(B) commercial
(C) industrial
(D) other sources

The source of waste generation listed in (D) above and titled "other sources," may be used by a jurisdiction to identify sources of solid waste

generation which it determines are not categorized as residential, commercial, or industrial sources of waste generation. Some examples of "other sources" of solid waste generators are: state and national parks and recreation areas, and self–haul vehicles.

(1) Sampling Period. Solid waste diversion and disposal characterizations shall demonstrate the composition and quantity of solid wastes diverted and disposed by the jurisdiction during a continuous twelve month period subsequent to 1984, pursuant to the requirements set forth in sections 18722(a) and (b) of this article. Data collection is not required for each day of the sampling period.

(2) Seasonal Variations. A solid waste generation study shall quantify seasonal variations in solid waste generation.

A. For a jurisdiction which uses a quantitative field analysis for the initial solid waste generation study prepared for the SRR Element, only one sampling period (e.g., one week) is required for each of the seasons identified by a jurisdiction that occur within the 6–month sampling period chosen by a jurisdiction. Only that amount of waste which enables a jurisdiction to meet the requirements of Section 41780(a)(1) of the Public Resources Code needs to be sampled by a jurisdiction.

A jurisdiction may use existing data from its own jurisdiction or from a similar jurisdiction, as defined in Section 18724(c) of this article, to determine the seasonal variation in the quantities and composition of solid wastes, and to determine the seasonal ratios of solid wastes generated, diverted and disposed, if the jurisdiction cannot obtain such data during its 6–month sampling period.

B. In subsequent solid waste generation studies prepared for revisions of SRR Elements, the data for a quantitative field analysis shall be collected with a frequency sufficient to sample the solid waste generated during all seasons identified by the jurisdiction, and in the amount needed to satisfy the requirements of section 41780 of the Public Resources Code.

C. For all solid waste generation studies, data collection is not required for each day of the seasons identified. In each season identified by a jurisdiction, the frequency of sampling shall be sufficient to provide a representative characterization of solid wastes generated, diverted, and disposed in the amounts needed to satisfy the requirements of section 41780 of the Public Resources Code. In subsequent solid waste generation studies, the frequency of sampling shall be statistically representative of the seasons sampled.

(3) Marine Wastes. A jurisdiction shall, in its solid waste generation study, identify all marine wastes generated in the jurisdiction and assign them to the waste categories and waste types listed in (j) of this section, or shall demonstrate that marine wastes generated within the jurisdiction have been accounted for within the commercial sources of solid waste generation.

(j) Solid Waste Categories and Types. A solid waste generation study shall identify solid waste generation, within a jurisdiction, by volume and weight, in accordance with the requirements of (f) of this section. A solid waste generation study shall identify solid waste generation within a jurisdiction by the following waste categories denoted by numerals 1 through 8, and the waste types which are identified by letter within each waste category:

(1) Paper:
- (A) corrugated containers and brown paper bags
- (B) mixed paper
- (C) newspaper
- (D) high grade ledger paper
- (E) other paper

(2) Plastics:
- (A) high–density polyethylene (HDPE) containers
- (B) polyethylene terephthalate (PET) containers
- (C) film plastics
- (D) other plastics

(3) Glass:
- (A) refillable glass beverage containers
- (B) California Redemption Value glass
- (C) other recyclable glass
- (D) other non–recyclable glass

(4) Metals:
- (A) aluminum cans
- (B) bi–metal containers
- (C) ferrous metals and tin cans
- (D) non–ferrous metals including aluminum scrap
- (E) white goods
- (F) other metals

(5) Yard Waste, including leaves, grass, and prunings

(6) Other Organics:
- (A) food waste
- (B) tires and rubber products
- (C) wood wastes
- (D) agricultural crop residues
- (E) manure
- (F) textiles and leather
- (G) other miscellaneous organics

(7) Other Wastes:
- (A) inert solids, including rock, concrete, brick, sand, soil, fines, asphalt, sheetrock
- (B) household hazardous waste materials and discarded household hazardous waste materials containers

(8) Special Wastes:
- (A) ash
- (B) sewage sludge
- (C) industrial sludge
- (D) asbestos
- (E) auto shredder waste
- (F) auto bodies
- (G) other special wastes

A jurisdiction may add additional waste types to this list, but only if the quantities of these additional waste types are not duplicates of the reported quantities of the waste types given in the list above.

(k) Composite Solid Wastes. A jurisdiction shall, in the case of a composite solid waste material which is readily separable into individual components, estimate in a solid waste generation study the separate percent contribution, by volume or weight, of each identifiable and separable waste category and waste type in the composite solid waste material.

(*l*) Sampling Methodologies. Each jurisdiction shall use one or more of the methodologies listed in (1) through (4) of this subsection, to characterize the waste categories, waste types and quantities of the solid wastes generated within the jurisdiction and diverted or disposed in solid waste landfills or transformation facilities, using the waste categories and types given in Sections 18722(i) and (j) of this article.

(1) Quantitative Field Analysis. The quantitative field analysis methodology shall be conducted using data which is collected in the field either from the sources of generation, from refuse collection vehicles or solid waste transfer vehicles; solid waste source reduction, recycling, and composting programs and facilities; and/or permitted solid waste transformation and disposal facilities.

For the purposes of this section, quantitative field analysis consists of two steps: (1) the physical separation and sorting of residential, commercial, industrial or other solid wastes, and/or the visual survey of the composition of the solid wastes contained in self–haul vehicles, industrial solid wastes contained in debris boxes or other industrial solid waste containers, and (2) the physical measurement or accurate estimation and recording of the weight and/or volume of the solid wastes observed when performing step (1).

(2) Materials Flow Methodology. A materials flow methodology is one in which a jurisdiction estimates, using data on the quantities of specific commodities sold in the jurisdiction's marketplace, the quantity of solid wastes generated as a result of sales of those commodities. With this methodology, adjustments are to be made for (a) import and export of

commodities to and from a jurisdiction, (b) commodity lifetime, and (c) other variables identified by a jurisdiction.

(3) Jurisdiction–Specific Data. This methodology is one in which a jurisdiction uses existing published data to estimate the amounts of solid wastes specific to its jurisdiction, e.g., data on demolition and construction wastes, sludges, automobile bodies, nonhazardous industrial wastes, incinerator residues, and other solid wastes which cannot be easily sampled or estimated by another methodology allowed by this section.

(4) Existing Data from Comparable Jurisdictions. The comparable jurisdiction methodology is one by which the jurisdiction analyzes solid waste generated in the jurisdiction by using existing solid waste composition data from another jurisdiction or jurisdictions in California, except as allowed in the following paragraphs of this subsection.

The use of out–of–state waste composition data is acceptable, provided that the jurisdiction submits with its solid waste generation study a statement of justification which satisfies its burden of proof of demonstrating the following:

1. The out–of–state data must be comparable to data available within California, and satisfy the requirements of subparagraphs (A), (B), and (C) of this section;

2. The statutory and regulatory framework of the state from which the data is derived must be consistent with the California Integrated Waste Management Act of 1989, as amended, and its attendant regulations, such that it is evident that the framework has not significantly impacted the relative composition of the solid wastes disposed and diverted in that state.

As a part of demonstrating the data's comparability and legal consistency, a jurisdiction shall submit a complete copy of the following, at the time the jurisdiction submits its SRR Element for the Board's consideration:

i). the waste characterization study and composition data it is using, and

ii). the solid waste statutory and regulatory framework of the state from which the study and data originated.

For the purposes of this section, out–of–state data refers only to data obtained from other states of the United States.

Except for the initial solid waste generation study, and as allowed by section 18724(c) of this article, data from another jurisdiction may be used to characterize the composition of solid waste generated only if all of the following criteria are met:

(A) the jurisdiction's population is within plus or minus 10% of that of the jurisdiction conducting the solid waste generation study; and

(B) the jurisdiction's total residential solid waste tonnage disposed is within plus or minus 10% of the total residential tonnage disposed by the jurisdiction conducting the solid waste generation study, or the jurisdiction's number of residential dwelling units is within plus or minus 10% of the number of residential units of the jurisdiction conducting the solid waste generation study; and

(C) the jurisdiction's total commercial solid waste tonnage disposed is within plus or minus 10% of the total commercial tonnage disposed by the jurisdiction conducting the solid waste generation study, or the jurisdiction's number of commercial units is within plus or minus 10% of the number of commercial units of the jurisdiction conducting the solid waste generation study.

(m) Solid Wastes Countable Towards Diversion.

For purposes of determining the quantity and types of solid wastes diverted, only those solid wastes which are normally disposed of at permitted solid waste landfills or permitted solid waste transformation facilities, and which are allowed to be counted toward the statutory diversion mandates pursuant to Sections 41781(a) and (b) of the Public Resources Code, as amended shall be included.

(n) Unacceptability of Double and Multiple Counting. A jurisdiction shall not double count or multiple count solid wastes that are diverted from disposal by recycling, composting and source reduction programs and facilities.

(o) Accuracy of Data. A jurisdiction shall, in compiling necessary data on the quantities and composition of solid wastes generated, diverted and disposed, develop a system of reporting procedures which will, as accurately as possible, quantify data reported from local governments, special districts, solid waste haulers, solid waste facility operators, scrap dealers, recycling facilities, recycling programs, and source reduction programs, for the purposes of the preparation of the SRRE, the Household Hazardous Waste Element, and the Countywide Siting Element. This system of reporting shall be separately outlined in the solid waste generation study when it is submitted to the Board.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41003, 41030, 41031, 41033, 41300, 41303, 41330, 41331, 41333, 41780, 41781 and 41821, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of printing error in subsection (j)(7)(A) (Register 91, No. 31).
7. Certificate of Compliance as to 2–15–91 order including amendment and renumbering of prior section 18724 to subsection 18722(*l*), and amendment and renumbering of prior section 18726 to subsections 18722(m) and (n), transmitted to OAL on 4–29–91 and filed 5–29–91 (Register 91, No. 37).
8. Change without regulatory effect amending subsection (f)(3) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
9. Amendment of article heading, section heading, text and NOTE filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of subsections (a), (e)(1), (f)(3), (f)(5), (g), (i)(3), (i)(4), (*l*), (*l*)(4)(A) and (m)(1) (Register 94, No. 37).
11. Editorial correction restoring HISTORY 6 and renumbering remaining HISTORY NOTES (Register 95, No. 19).
12. Reinstatement of article heading, section heading, section and NOTE as they existed prior to 3–31–94 emergency amendment filed 7–31–97 by operation of Government Code section 11346.1(g) (Register 97, No. 31).
13. Change without regulatory effect amending subsections (c)(1)(B)–(C) filed 7–15–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 29).

§ 18724. Additional Requirements and Guidelines for the Initial Solid Waste Generation Study.

In addition to the general requirements in section 18722 of this article, the following requirements pertain to a jurisdiction's preparation of the initial solid waste generation study for the initial SRR Element.

(a) Initial Solid Waste Generation Study Submission Dates. Each city, which is not a city and county, shall submit the initial solid waste generation study, as a part of its SRR Element, to the county in which it is located by July 1, 1991, except as provided by section 41000(b) of the Public Resources Code. Each county, and city and county, shall complete the initial solid waste generation study, as a part of its SRR Element, by July 1, 1991, except as provided by section 41000(b) of the Public Resources Code.

(b) Regional and Joint Solid Waste Generation Studies. In addition to the methodologies given in section 18722(*l*) of this article, for the initial solid waste generation study,

a jurisdiction may use data collected on an aggregate basis for a joint or regional study of which a jurisdiction is a part. For the purposes of this section, data collected on an aggregate basis are data which are collected

at solid waste facilities and recycling facilities which may not be readily disaggregated to a level in which an individual jurisdiction's solid waste generators, waste categories and/or waste types can be identified.

The aggregate data shall be disaggregated on a proportional basis, relative to the applicable demographic, economic, and residential, commercial and industrial characteristics of each jurisdiction participating in the regional or joint study. The initial solid waste generation study shall outline and describe how the proportional allocations of solid waste generated, diverted and disposed were determined and applied to the preparation of the solid waste generation study.

(c) Use of Pre–existing Solid Waste Generation Studies and Data. In addition to the methods given in section 18722(*l*) of this Article, for the initial solid waste generation study, a jurisdiction may use pre–existing solid waste generation studies or data on solid waste composition that have been prepared, subsequent to 1984, by the Board and/or by jurisdictions in California or out–of–state which have similar demographic (e.g., dwelling unit size, family size), and economic (e.g., income, employment), or solid waste (e.g., waste composition, relative proportions of solid waste generators) characteristics.

The use of out–of–state waste composition data is acceptable, provided that the jurisdiction submits with its solid waste generation study a statement of justification which satisfies its burden of proof by demonstrating the following:

1. the out–of–state data must be comparable to data available within California, and satisfy the requirements of subsection (c) of this section; and

2. the statutory and regulatory framework of the state from which the data is derived must be consistent with the California Integrated Waste Management Act of 1989, as amended, and its attendant regulations, such that it is evident that the framework has not significantly impacted the relative composition of the solid wastes disposed and diverted in that state.

As a part of demonstrating the data's comparability and legal consistency, a jurisdiction shall submit a complete copy of the following, at the time the jurisdiction submits its SRR Element for the Board's consideration:

i) the waste characterization study and composition data it is using, and

ii) the solid waste statutory and regulatory framework of the state from which the study and data originated.

For the purposes of this section, out–of–state data refers only to data obtained from other states of the United States.

A jurisdiction using solid waste generation studies or data from the Board and/or another jurisdiction with similar demographic, economic and solid waste characteristics shall list and describe in its solid waste generation study all the major characteristics which are similar between the two jurisdictions relative to the study.

(d) Measuring Solid Waste Quantity for Diversion Mandates. If a jurisdiction chooses to count specific waste types towards its statutory diversion mandates, a jurisdiction shall identify those waste types in the initial solid waste generation study.

(e) Sampling Period – Field Study and Data Projection. If a quantitative field analysis and/or materials flow methodology, as described in section 18722(*l*) of this Article, are used, data for the initial solid waste generation study shall be collected in the field during a continuous six month period subsequent to 1984 and prior to the adoption of the initial SRR Element by a jurisdiction. Based on the data collected during the 6–month field study, a jurisdiction shall project the types and quantities of solid waste generated, diverted and disposed for the following 6–month period. The field data and the projection, when combined, shall constitute the continuous 12–month study required by section 18722(i)(1) of this article.

(f) Sampling by Quantitative Field Analysis. If a quantitative field analysis for the initial solid waste generation study is selected for use by a jurisdiction, the quantitative field analysis may be conducted using the sampling procedures outlined in Appendix 1. "General Guidelines for Sampling When Performing a Quantitative Field Analysis for a Solid Waste Generation Study" (11/90).

(g) Aggregate Data. In the preparation of the initial solid waste generation study, jurisdictions jointly developing or collecting aggregate data on a county or regional basis shall use only that data related to the quantities of solid waste generated within that region, not data on quantities of solid waste generated within other regions.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41000, 41030, 41031, 41033, 41300, 41330, 41332, 41333, 41781 and 41823, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment and renumbering of prior section 18724 to subsection 18722(*l*), and new section 18724 transmitted to OAL on 4–29–91 and filed 5–29–91; operative 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsections (c) and (c)(1) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading, text and NOTE filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of subsection (g) (Register 94, No. 37).
10. Editorial correction restoring HISTORY NOTES 1–5, correcting HISTORY 6, and renumbering remaining HISTORY NOTES (Register 95, No. 19).
11. Reinstatement of section heading, section and NOTE as they existed prior to 3–31–94 emergency amendment filed 7–31–97 by operation of Government Code section 11346.1(g) (Register 97, No. 31).

§ 18726. Solid Waste Generation Studies for Revised SRR Elements.

In addition to the general requirements in section 18722 of this article, the following requirements pertain to a jurisdiction's preparation of solid waste generation studies for Revised SRR Elements.

(a) Individual Jurisdiction Responsibility.

For all revisions of an SRR Element in which solid waste generation studies are conducted jointly by two or more jurisdictions, each participating jurisdiction shall be responsible for specifically measuring and identifying, in its SRR Element, the estimated quantity of solid waste generated within its jurisdiction which is disposed or diverted from disposal by source reduction, recycling or composting activities.

(b) Identification of Solid Waste Sources, categories and types. Solid Waste generation studies prepared for revisions of the SRR Element shall identify the quantities of solid waste generated the jurisdiction, by source, by waste category and waste type as listed in sections 18722(i) and (j) of this Article. Data for each Solid Waste generation study submitted to the Board as a part of a revised SRR Element pursuant to revisions required by Article 7 of this Chapter shall have been collected during a continuous twelve month period.

(1) commencing no more than three years prior to the next Board submittal date for the SRR Element as required by Article 7 of this Chapter.

(c) Sampling by Quantitative Field Analysis. The quantitative field analysis for all Solid Waste generation studies for revised SRR Elements shall be conducted using the sampling procedures outlined in Appendix 1, "General Guidelines for Sampling When Performing a Quantitative Field Analysis for a Solid Waste Generation Study" (11/90), unless otherwise authorized by the Board.

(d) Requirement for Statistical Representation. Solid Waste generation studies for revised SRR Elements shall be statistically representative of the composition and quantity of solid waste generated, diverted and disposed by the jurisdiction. Statistical representation shall be established by use of the Guidelines given in Appendix 1 of this Article.

(e) Partial Solid Waste Generation Studies. If, upon review of the annual report submitted by a jurisdiction in compliance with section 41821 of the Public Resources Code, the Board finds that the lack of accurate and/or sufficient information on solid waste quantities and solid waste composition has contributed to the inability of a jurisdiction to meet the goals and objectives cited in its adopted SRR Element, and/or to meet the statutory diversion mandates given in section 41780 of the Public Resources Code, the Board may require a jurisdiction to prepare a partial solid waste generation study focused on particular sources of generation, and/or particular waste categories and waste types.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41032, 41033, 41330, 41331, 41332, 41333, 41781, 41821, 41822 and 41823, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment and renumbering of prior section 18726 to subsections 18722(*m*) and (n), and new section 18726 transmitted to OAL on 4–29–91 and filed 5–29–91; operative 5–29–91 (Register 91, No. 37).
7. Amendment of section heading, text and NOTE filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Editorial correction restoring HISTORY NOTES 1–5 and renumbering remaining HISTORY NOTES (Register 95, No. 19).
9. Reinstatement of section heading, section and NOTE as they existed prior to 3–31–94 emergency amendment filed 7–31–97 by operation of Government Code section 11346.1(g) (Register 97, No. 31).

Appendix 1

General Guidelines for Sampling When Performing a Quantitative Field Analysis for a Solid Waste Generation Study (CIWMB – November, 1990)

1. Sampling Solid Waste Generation, Diversion and Disposal – Perform these tasks in the following order:

a. Identify the Populations.

In each jurisdiction, identify: the populations of (1) residential units, commercial units, industrial sites, and other sites of solid waste generation; (2) facilities and programs which recycle, compost, or source reduce solid wastes; and (3) solid waste transfer stations, and permitted solid waste transformation facilities and solid waste disposal sites.

For the purposes of these guidelines, a population is the aggregate from which a sample is chosen, and refers to the aggregate number of solid waste generators, solid waste diversion facilities and programs, or solid waste transfer, transformation and disposal facilities identified by the jurisdiction.

b. Stratify the Populations (Optional Step).

Stratify each identified population into distinct subpopulations. The jurisdiction shall select the subpopulations. For example, to stratify the population for a solid waste diversion characterization, the jurisdiction could stratify the population of recycling facilities into the following subpopulations: drop–off centers, buy–back centers, and thrift shops. If the number of units in the subpopulation is small, the jurisdiction may choose not to stratify the population, and instead choose a sample from the population as a whole.

c. Random Sampling.

Assign a unique number to each identified unit of a population or subpopulation. Using a random numbers table or any other unbiased sampling method, choose the units to be sampled in the population or subpopulation, for each season identified by a jurisdiction. State the type(s) of unbiased sampling methods used in the solid waste generation study, when the study is submitted to the Board as a part of the SRR Element.

2. Sampling and Variability Determination: In order to determine the minimum number of samples to be taken from a population or subpopulation, a jurisdiction may use one of the following two methods:

(a) Klee and Carruth Method.

Perform these tasks as follows:

(i) Sample, according to the requirements of sections 18722, 18724 and 18726 of this article, all of the solid waste generated, all of the solid waste diverted from disposal by recycling, composting or source reduction activities, and all of the solid waste transformed and disposed, for each identified population or subpopulation.

(ii) To determine the number of samples required for a statistically representative sampling from each population or subpopulation, the jurisdiction shall use the formula for normal approximation which is found in: A.J. Klee and D. Carruth, "Sample Weights in Solid Waste Composition Studies," American Society of Civil Engineers Journal of the Sanitary Engineering Division, volume 96(SA4), pages 945–954, August 1970, which is incorporated by reference. A 90% confidence interval shall be used in this formula.

This formula is:

$$n = \left(\frac{zs}{\delta}\right)^2$$

A 90% confidence level shall be used in this formula. Thus at 90% confidence level, z = 1.645 and s = 0.1632, where z is the normal standard deviate (one–tailed) for the confidence level desired and s is the estimated standard deviation of the sample, transformed (arcsin) basis. A jurisdiction shall use these values for z and s in computing the minimum number of samples.

A jurisdiction shall select the confidence interval and confidence width to be used in computing the minimum number of samples, i.e., the jurisdiction shall determine the δ (small delta) value to use in the formula.

In order to determine δ, a jurisdiction shall estimate its percent waste composition (X) by use of existing published data (waste category, and waste type if available) about the jurisdiction. and/or published data on percent waste composition from other jurisdictions. The source of the value of X used in the solid waste generation study shall be stated in the solid waste generation study.

Next, a jurisdiction shall select a level of precision or sensitivity (Δ) (large delta) (e.g., 1%, 2%, 3%) concomitant with its need for a given level of precision. with its population, and with the funds it has available for the solid waste generation study, as determined by the jurisdiction.

The waste category occurring in the highest percent in the selected waste stream shall be selected as the waste category for determining X and computing δ.

(iii) All solid waste generation studies prepared using the Klee and Carruth Method for the purposes of meeting the requirements of the Integrated Waste Management Act of 1989, as amended, and otherwise approved by the Board, shall be considered to meet the requirements of this article.

b. American Society of Testing Materials (ASTM) Method.

(i) Sample, according to the requirements of sections 18722, 18724 and 18726 of this article, all of the solid waste generated, all of the solid waste diverted from disposal by recycling, composting or source reduction activities, and all of the solid waste transformed and disposed, for each identified population or subpopulation in the jurisdiction.

(ii) A jurisdiction shall use section 9 and Table D of Draft No. 4 of the proposed ASTM "Method for Determination of the Composition of Unprocessed Municipal Solid Waste," dated January 24, 1990, which is incorporated by reference. A jurisdiction may also use the values for s and x in Table C of this method, or may use values for s and x found in published solid waste characterization studies which were conducted in California subsequent to 1984. Other sections of this Method may be used with section 9 and Table D. Once a final version of this Method is adopted by ASTM, that Method shall become the approved method for compliance with this article.

All solid waste generation studies prepared using the Draft ASTM Method for the purposes of meeting the requirements of the Integrated Waste Management Act of 1989, as amended, and otherwise approved by the Board, shall be considered to meet the requirements of this article.

3. Sort and Identify.

Sort and identify the solid wastes from each population and/or subpopulation, using the sources of waste generation listed in section 18722(i) of this article, and the waste categories and waste types listed in section 18722(j) of this article.

4. Assignment of Waste Category and Waste Type.

Assign each identified solid waste material to one of the waste categories and waste types listed in sections 18722(j) of this article, or to any additional waste types which a jurisdiction chooses to add to the list of waste types in section (j) of this article.

5. Volume or Weight Measurement.

Measure the volume or weight of each solid waste material that has been identified.

6. Tabulate and Analyze Data – Perform these tasks in the following order.

Tabulate and analyze all data compiled about the waste categories and waste types. As a part of the analysis, a jurisdiction shall compute (a) and (b) as follows:

a. Determination of Mean and Variability.

Compute the sample mean ($\bar{x}$) for volume or weight for each waste category and waste type identified.

Note, $\bar{x} = \Sigma x_i / n$, where x_i is a sample weight or volume and n is the total number of samples taken in the population or subpopulation sampled.

Next, compute the variance (s^2; i.e., where $s^2 = \Sigma(x_i - \bar{x})^2/n-1$) and the standard deviation of the mean(s), for volume or weight measurement for each population and subpopulation, using the following formula:

$$s = \sqrt{\frac{\Sigma (x_i - \bar{x})^2}{(n-1)}}$$

b. Set Confidence Levels for Sample Mean.

Set a 90% confidence level around the sample mean ($\bar{x}$), for each waste category and waste type identified.

Use the formula:

$$\bar{x} \pm (t_{n-1})\left(\frac{s}{\sqrt{n}}\right)$$

where t_{n-1} is the t value taken from the Student's t test values in Table 1, and where (n–1) is the degrees of freedom for the Student's t test for a 90% confidence level.

Note: This formula is used to establish a confidence interval for a population mean when the population variance is unknown. This formula is found in: M. Woodward and L.M.A. Francis, 1988, Statistics for Health Management and Research, section 7.4.3, pgs. 161–162, London: Edward Arnold Publishers, which is incorporated by reference.

7. Data Analysis Adjustment.

The data analysis conducted in steps 1 through 6 may be adjusted to include waste categories and waste types which:

(a) are known, by current written records held by the solid waste recycling, composting, source reduction, transformation or disposal facilities, to be disposed or diverted in a jurisdiction or in permitted solid waste facilities used by a jurisdiction, and

(b) may otherwise have been overlooked in the random sampling procedure.

TABLE 1
Student's t Values*

Number of Samples (n)	*Degrees of Freedom (n–1)*	*90% Confidence Level*
2	1	6.314
3	2	2.920
4	3	2.353
5	4	2.132
6	5	2.015
7	6	1.943
8	7	1.895
9	8	1.860
10	9	1.833
11	10	1.812
12	11	1.796
13	12	1.782
14	13	1.771
15	14	1.761
16	15	1.753
17	16	1.746
18	17	1.740
19	18	1.734
20	19	1.729
21	20	1.725
22	21	1.721
23	22	1.717
24	23	1.714
25	24	1.711
26	25	1.708
27	26	1.706
28	27	1.703
29	28	1.701
30	29	1.699
31	30	1.697
36	35	1.690
41	40	1.684
46	45	1.679
51	50	1.676
61	60	1.671
71	70	1.667
81	80	1.664
91	90	1.662
101	100	1.660
121	120	1.658
141	140	1.656
161	160	1.654
189	188	1.653
210	200	1.653
oo	oo	1.645

*Source: George Savage, Draft ASTM Method, ASTM Designation DXXXX–XX, Table D, January, 1990, Philadelphia, PA: American Society of Testing Materials.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41030, 41031, 41032, 41033, 41300, 41330, 41331, 41332, 41333, 41780 and 41781, Public Resources Code.

HISTORY

1. New Appendix 1 filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91

or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 2–15–91 order, including amendments and new TABLE 1 transmitted to OAL on 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Editorial correction of NOTE, HISTORY 6 and TABLE 1, including correct placement of NOTE and HISTORY (Register 94, No. 37).

§ 18726.1. Calculation of Maximum Disposal Tonnage.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780, 41780.1 and 41780.2, Public Resources Code.

HISTORY

1. New section filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Editorial correction clarifying tables (Register 94, No. 37).
3. Repealer filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
4. Repealer refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18726.2. Calculation of Minimum Diversion Tonnage.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780, 41780.1 and 41780.2, Public Resources Code.

HISTORY

1. New section filed 3–31–94 as an emergency; operative 3–31–94 (Register 94, No. 13). A Certificate of Compliance must be transmitted to OAL by 3–31–97 pursuant to Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Editorial correction clarifying tables (Register 94, No. 37).
3. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 31).

Article 6.2. Source Reduction and Recycling Elements

§ 18730. Scope.

(a) The Source Reduction and Recycling Element (SRRE) shall specify the means by which each jurisdiction required to prepare and implement a SRRE shall achieve the diversion mandates required by Public Resources Code section 41780 and 41780.1.

(b) The SRRE shall include items identified in chapter 9, Article 6.1, sections 18722 through 18726, and sections 18731 through 18748 of this Article, as applicable.

(c) Unless otherwise specified, this Article pertains to initial and subsequent SRREs.

(d) For the purpose of this Article, a jurisdiction is a city, county, city and county or a regional agency.

(e) For the purpose of this Article, programs which may be considered as funded or operated by a jurisdiction or local governing body are identified in Public Resources Code section 41781.2(b)(1).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40052, 40057, 40970–40975, 41000, 41300, 41780, 41780.1 and 41781.2, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsections (a), (b) and (e) and amendment of NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18731. Goals and Objectives.

The SRRE shall include statements which define the goals and objectives for the short–term and medium–term planning periods.

(a) SRRE goals shall be consistent with the mandates of section 40051 of the Public Resources Code.

(b) SRRE objectives shall identify the amount of solid waste which the jurisdiction plans to divert from disposal at facilities to comply with the diversion requirements of Public Resources Code Sections 41780 and 41780.1 through each of the component programs described in sections 18733 through 18748 of this Article.

(c) SRRE objectives shall specify the time frame for achievement of each objective.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 40052, 40900(c), 41001, 41301, 41780, 41780.1 and 41781.2, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsection (b) and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18732. Solid Waste Generation Analysis.

Each jurisdiction preparing a SRRE shall prepare a solid waste generation analysis based upon the information developed in Article 6.1 of this Chapter. The analysis shall include, but not be limited to, the following:

(a) For the initial SRRE, include a list, by specific waste categories, as denoted in section 18722, of Article 6.1 of this chapter, of the quantities of materials currently diverted from disposal, and the materials identified as being currently disposed according to the Waste Generation Study conducted by the jurisdiction.

(b) A list of the waste materials currently disposed in the jurisdiction which could potentially be diverted from disposal by use of the diversion programs described in sections 18733 through 18740, of this Article.

(c) A list of the waste materials currently disposed in the jurisdiction which cannot be diverted from disposal by diversion programs including, but not limited to, those described in sections 18733 through 18740 of this article and a discussion of why these waste materials cannot be diverted from disposal.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41030, 41051, 41071, 41201, 41330, 41351, 41371 and 41401, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of first paragraph, subsection (a) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733. Model Component Format.

(a) The model component format, described in sections 18733.1 through 18733.6 of this Article, shall be used in the preparation of each of the following individual components of the SRRE:

(1) Source Reduction Component

(2) Recycling Component

(3) Composting Component

(4) Special Waste Component

(b) Additional requirements contained in sections 18734 through 18737.2 of this Article, shall be included in the preparation of the components, listed in section 18733(a) of this Article, in accordance with the model component format.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41003 and 41303, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsection (a) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsection (b), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733.1. Component Objectives.

(a) Each component shall state the specific objectives to be accomplished during the short–term and medium–term planning periods. The initial SRRE component objectives shall be based upon the results of the Solid Waste Generation Analysis required by section 18732 of this Article and other local considerations which may be necessary to accomplish integrated waste management.

(b) For the initial SRRE, each jurisdiction shall identify specific waste categories or waste types, as found in the Solid Waste Generation Study conducted pursuant to section 18722, of Article 6.1 of this chapter, as priorities for waste diversion based on analysis of solid waste generation in terms of criteria which may include, but are not limited to, the following:

(1) volume of the solid waste;

(2) weight of the solid waste;

(3) hazard of the solid waste; and

(4) material, products or packages, contributing to the waste category or waste type, that are made of non–renewable resources.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41054, 41071, 41201, 41351, 41371 and 41401, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history, see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (b), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsections (a) and (b) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733.2. Existing Conditions Description.

(a) As applicable, each component, listed in section 18733(a) of this Article, shall include a description of the existing diversion alternatives for each component program in the jurisdiction. The description shall include, but not be limited to, the following:

(1) a brief description of each existing diversion alternative implemented in the jurisdiction; and

(2) the quantity of waste diverted, listed by waste category and waste type where applicable as follows:

(A) for the initial SRRE identify the quantity of waste diverted for each existing diversion alternative. Waste quantities shall be specified by volume, expressed in cubic yards, or by weight, expressed in tons;

(B) for a subsequent SRRE, quantify each existing diversion alternative which involves recycling or composting programs that are operated or funded by a jurisdiction. Waste quantities shall be specified by weight, expressed in tons or volume, expressed in cubic yards.

(3) an identification and description of the existing diversion alternatives within the jurisdiction that will be decreased in scope, phased out or closed during the short–term and medium–term planning periods. The description shall include a discussion of the effects of such closure on existing solid waste management activities within the jurisdiction and its impact on the attainment of the solid waste diversion mandates specified in sections 41780 and 41780.1, Public Resources Code.

(b) The information provided in this section shall be used to:

(1) account for existing diversion amounts when calculating baseyear solid waste generation rates in the initial SRRE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40901, 41031, 41333, 41780, 41780.1 and 41780.2, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of subsections (a)(2)(B), (a)(3) and (b)(1), repealer of subsection (b)(2), and amendment of NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733.3. Evaluation of Alternatives.

Each component shall include an evaluation of diversion alternatives which have been considered for local implementation for the purpose of achieving the objectives required in section 18733.1, of this Article.

(a) Each alternative considered shall be evaluated in terms of the following criteria and any other local considerations:

(1) effectiveness in reducing either solid waste volume, weight, percentage in weight or its volumetric equivalent;

(2) hazard created by the alternative considered;

(3) ability to accommodate changing economic, technological, and social conditions;

(4) consequences of the diversion alternative on the characterized waste, such as shifting solid waste generation from one type of solid waste to another;

(5) whether it can be implemented in the short–term and medium–term planning periods; and

(6) the need for expanding existing facilities or building new facilities to support implementation of the alternative.

(b) In addition, the evaluation shall include, but not be limited to, the following:

(1) a discussion of the consistency of each alternative with applicable local policies, plans, and ordinances based upon local conditions;

(2) a discussion of any institutional barriers to local implementation of each alternative;

(3) an estimate of the costs related to the implementation of each alternative being evaluated for the short–term and medium–term planning periods; and

(4) a discussion of the availability of local, regional, state, national, and international end–uses for the materials which would be diverted through implementation of each alternative being considered.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(c), 41053, 41073, 41203, 41250, 41260, 41353, 41373, 41403, 41450, 41460, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–14–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733.4. Selection of Programs.

(a) Each component shall identify and describe the diversion alternatives selected, including existing diversion alternatives, expansions of existing diversion alternatives, and new diversion alternatives, which will be implemented to meet the objectives of the component and meet the solid waste diversion requirements specified in Public Resources Code, section 41780 and 41780.1. This selection shall be based upon the evaluations conducted pursuant to section 18733.3 of this Article. The program description shall include, but not be limited to, the following:

(1) a discussion of each diversion alternative selected for the program identifying why the alternative was selected for implementation. For the initial SRRE this discussion shall be based upon the data compiled in the solid waste generation study conducted pursuant to Article 6.1, of this chapter, information contained in the solid waste generation analysis required by section 18732 of this Article; and the evaluation conducted pursuant to section 18733.3 of this Article.

(2) an estimate of the anticipated quantities of solid wastes to be diverted from solid waste disposal, by diversion program and waste type, for the short–term and medium–term planning periods. Solid waste quantities shall be estimated either by volume, expressed in cubic yards, or by weight, expressed in tons. Each component shall state the anticipated percentage of contribution of the selected program towards the diversion mandates required by section 41780 and 41780.1 of the Public Resources Code;

(3) as applicable to the component, a listing of the anticipated local, regional, state, national, and/or international end–uses for diverted materials based upon the evaluation of the diversion alternative required by section 18733.3(b)(4) of this Article;

(4) as applicable to the component, a description of the proposed methods for handling and disposal which may be necessary to implement the selected program; and

(5) a description of any facilities to be utilized for the implementation of the program which section 18733.3 of this Article has shown must be expanded or built to support implementation of the selected program.

(b) Each diversion alternative which involves waste type "sludge" shall, in addition to the criteria set forth in subsections (a)(1) and (a)(2) of this section, be subject to a finding by the Board as described in Article 7.0 section 18775.2.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(c), 41050–41053, 41070–41075, 41200–41204, 41250, 41260, 41350–41353, 41370–41375, 41400–41404, 41450, 41460, 41480, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18733.5. Program Implementation.

Each component shall contain a program implementation description which includes, but is not limited to, the following:

(a) identification of government agencies and divisions thereof, organizations, and/or persons responsible for implementation of the selected program;

(b) identification of the tasks necessary to implement the selected program;

(c) identification of a short-term and medium-term planning period implementation schedule addressing each task identified in (b) of this section.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(c), 41050, 41070, 41200, 41250, 41260, 41350, 41370, 41400, 41450, 41460 and 41780, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7-6-90 emergency regulations approved by OAL 11-6-90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2-15-91 as an emergency; operative 2-15-91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-17-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-15-91 order, including amendment of first paragraph, transmitted to OAL 4-29-91 and filed 5-29-91 (Register 91, No. 37).
7. Amendment of subsection (c) and NOTE and repealer of subsection (d) filed 1-3-94 as an emergency; operative 1-3-94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1-3-97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-3-94 order, including additional amendment of NOTE, transmitted to OAL 12-31-96 and filed 2-13-97 (Register 97, No. 7).

§ 18733.6. Monitoring and Evaluation.

(a) Each jurisdiction shall use one or more of the following methods to monitor and evaluate diversion programs being implemented:

(1) for the initial SRRE, a Waste Generation Study consistent with the waste generation study prepared under section 18722, of Article 6.1 of this Chapter;

(2) targeted solid waste characterization studies involving recycling, composting, transformation, and solid waste landfill facilities to measure changes in the volume, or weight of specific materials;

(3) an assessment of any changes in the design, production, distribution, sale, or use of selected products and packages which affect solid waste generation; or

(4) another method for which prior written approval has been given by the Board.

(b) Each jurisdiction shall provide the following information based upon the specific monitoring and evaluation methods selected for each recycling and composting program that is operated or funded by a jurisdiction:

(1) written criteria for evaluating the program's effectiveness;

(2) identification of agencies or divisions thereof, organizations, or persons responsible for the program's monitoring, evaluation, and reporting;

(3) identification of measures to be implemented if monitoring shows a shortfall in the attainment of solid waste diversion objectives of the component or a shortfall in the attainment of the diversion mandates specified in Public Resources Code, sections 41780 and 41780.1. Such measures may include, but are not limited to, provisions for:

(A) increasing the frequency of program monitoring and review, or,

(B) modification of the objectives or diversion alternatives adopted in each component program.

(c) Each recycling or composting component program that is operated or funded by a jurisdiction shall contain an explanation of how the program is to be monitored and evaluated during its implementation. A jurisdiction shall identify the methods to quantify and monitor achievement of the objectives, including but not limited to, diversion from solid waste landfills and transformation facilities and reduction of waste hazards. Actual solid waste diversion shall be quantified in cubic yards, or in tons, and as a percentage of the total solid waste generation of the jurisdiction.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40901, 41052, 41072, 41202, 41250, 41260, 41352, 41372, 41402, 41450, 41460, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7-6-90 emergency regulations approved by OAL 11-6-90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2-15-91 as an emergency; operative 2-15-91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-17-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-15-91 order, including amendment of first paragraph and subsection (b), transmitted to OAL 4-29-91 and filed 5-29-91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1-3-94 as an emergency; operative 1-3-94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1-3-97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-3-94 order, including additional amendment of section and NOTE, transmitted to OAL 12-31-96 and filed 2-13-97 (Register 97, No. 7).

§ 18734. Source Reduction Component Specific Requirements.

The Source Reduction Component shall include the requirements contained in sections 18733.1 through 18734.3 of this Article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41050 and 41350, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7-6-90 emergency regulations approved by OAL 11-6-90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2-15-91 as an emergency; operative 2-15-91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-17-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-15-91 order transmitted to OAL 4-29-91 and filed 5-29-91 (Register 91, No. 37).
7. Amendment of NOTE filed 1-3-94 as an emergency; operative 1-3-94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1-3-97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-3-94 order, including amendment of section, transmitted to OAL 12-31-96 and filed 2-13-97 (Register 97, No. 7).

§ 18734.1. Source Reduction Component Objectives.

(a) Each jurisdiction shall examine and select source reduction program objectives which meet the goal of minimizing the quantity of solid waste disposed including, but not limited to, the following:

(1) reducing the use of non-recyclable materials;

(2) replacing disposable materials and products with reusable materials and products;

(3) reducing packaging;

(4) reducing the amount of yard wastes generated;

(5) purchasing repairable products; and,

(6) increasing the efficiency of the use of paper, cardboard, glass, metal, and other materials by reducing wastes from non–residential generators' production operations, processes, and equipment and considering durability, reusability, and recyclability as product selection criteria.

(b) Each jurisdiction shall identify specific waste types (materials, products, and packaging) to be targeted for the source reduction objectives, based upon criteria, which include, but are not limited to, the following:

(1) the potential to extend the useful life of affected materials, products, or packaging; and

(2) whether the waste type has limited recyclability.

NOTE: Authority cited: Sections 40502, Public Resources Code. Reference: Sections 40900(c), 41050–41054 and 41350–41354, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a) and (c), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsection (a) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18734.2. Source Reduction Component Existing Conditions Description.

(a) The description of existing conditions shall identify the source reduction activities currently being performed by public and private entities including, but not limited to governmental, commercial, and industrial entities;

(b) For the initial SRRE, quantification of current source reductions achieved through existing programs within the jurisdiction shall meet the following criteria:

(1) the methodology, assumptions, and results shall be described, documented, and verified; and,

(2) the jurisdiction shall use the best readily available and applicable data, which may include direct observations and measurements of source reduction and the results of monitoring programs similar to those identified in section 18733.6 of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41050, 41053, 41350 and 41353, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsection (b) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18734.3. Evaluation of Source Reduction Program Alternatives.

Each jurisdiction shall consider source reduction program alternatives including, but not limited to, the following:

(a) Rate structure modifications, which may include, but are not limited to:

(1) local waste disposal fee modifications;

(2) quantity–based local user fees, which may include, but are not limited to, variable can rates for garbage collection services, such as fees based on the number of containers set out for collection;

(b) Creation of other economic incentives, which may include, but are not limited to:

(1) loans, grants, and loan guarantees;

(2) deposits, refunds, and rebates; and

(3) reduced business license fees;

(c) Technical assistance or instructional and promotional alternatives, which may include, but are not limited to:

(1) waste evaluations;

(2) the establishment of compost programs which assist generators to compost at the site of generation;

(3) technical assistance to industry and consumer organizations, and to source reduction businesses;

(4) educational efforts, such as consumer awareness programs, school curricula development, seminars, and public forums;

(5) awards and other types of public recognition for source reduction activities; and

(6) non–procurement source reduction programs, such as education of employees, office changes to increase the use of scrap paper, increased use of electronic mail, and increased double–sided copying.

(d) Regulatory programs, which may include, but are not limited to:

(1) local adoption of ordinances that specify that one or more of the following criteria be considered in the procurement selection of products and packaging by the jurisdiction:

(A) durability

(B) recyclability

(C) reusability

(D) recycled material content

(2) local establishment of incentives and disincentives to land–use development that promote source reduction;

(3) locally established requirements of waste reduction planning and reporting by waste generators or manufacturers;

(4) local adoption of bans on products and packaging to the extent the following can be demonstrated:

(A) the ban will result in reduction in waste at the source, rather than substitution by another product or package of equivalent or greater volume; and

(B) the ban will result in a net environmental benefit.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41050–41054 and 41350–41354, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (d)(4)(A), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsections (d)(1), (d)(2), (d)(3) and (d)(4) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of first paragraph, subsections (b) and (d)(4)(A) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–3–94 order, including amendment of subsection (d)(3)(A), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735. Recycling Component Specific Requirements.

The Recycling Component shall include the requirements contained in sections 18733.1 through 18733.6 and 18735.1 through 18735.5 of this Article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41070 and 41370, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735.1. Recycling Component Objectives.

A statement of market development objectives to be achieved in the short–term and medium–term planning periods shall be included in the goals and objectives section of the recycling component, as required by sections 41074 and 41374 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41070–41074 and 41370–41374, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735.2. Recycling Component Program Existing Conditions Description.

The description of the existing recycling program shall include, but not be limited to, a description of existing private and public recycling activities, local market development activities, including any government procurement programs, economic development activities, consumer incentives, and education programs conducted within the jurisdiction.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41070 and 41370, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of first paragraph, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735.3. Evaluation of Recycling Program Alternatives.

Each jurisdiction shall analyze the recycling diversion alternatives affecting residential, commercial, and industrial wastes. The analysis shall take into account existing recycling programs and their possible expansion in addition to the areas of concern specified in section 18733.3 of this Article.

(a) The alternatives shall include, but not be limited to, the following methods for accomplishing separation of the recyclable materials from the waste stream:

(1) separation of recyclable materials at the source of generation, including curbside and mobile collection systems;

(2) drop–off recycling centers;

(3) buy–back recycling centers;

(4) manual material recovery operations;

(5) mechanized material recovery operations that produce a product which has a market; and

(6) salvage at solid waste facilities.

(b) The jurisdiction shall consider changing zoning and building code practices to encourage recycling of solid wastes, such as, rezoning to allow siting of a drop–off recycling center in residential neighborhoods or revising building codes to require adequate space be allotted in new construction for interim storage of source–separated materials.

(c) The jurisdiction shall consider changing existing rate structures to encourage recycling of solid wastes.

(d) The jurisdiction shall consider the methods which it will use to increase the markets for recycled materials, including, but not limited to,

changing governmental procurement programs to promote market development by giving purchase preferences to recycled products or otherwise specifying their use.

(e) The jurisdiction shall encourage handling methods which preserve the integrity of recovered materials so that they remain usable raw materials for manufacturers of recycled content products. For this purpose, the jurisdiction shall consider the extent to which separation of recyclable materials from waste can be performed as close to the point of generation as possible.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(d), 41075 and 41375, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of printing error in first paragraph (Register 91, No. 31).
7. Certificate of Compliance as to 2–15–91 order, including amendment of first paragraph and subsection (d), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
8. Amendment of first paragraph and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735.4. Selection of Recycling Program.

(a) The recycling component shall identify the end markets or end users which will be secured during the short–term period, for the materials collected. In the event that such markets cannot be identified, the component shall describe the methods by which the jurisdiction will secure the necessary markets.

(1) The identification of markets may be described in general terms.

(2) Planned development of markets at manufacturing facilities in the jurisdiction shall also be described.

(b) The Recycling Component shall describe the measures to be taken if uneconomical market conditions or other unfavorable conditions occur which are beyond the jurisdiction's control and which would prevent the jurisdiction from satisfying the requirements of sections 41780 and 41780.1 of the Public Resource Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41074, 41374, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of printing error in first paragraph (Register 91, No. 31).
7. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (b), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
8. Amendment of subsection (b) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of subsection (b) and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18735.5. Recycling Program Implementation.

The recycling program shall denote actions planned to deter unauthorized removal of recyclable materials which would adversely affect the recycling program's effectiveness.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41070 and 41370, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18736. Composting Component Specific Requirements.

The Composting Component shall include the requirements contained in sections 18733.1 through 18733.6 and 18736.1 through 18736.4 of this Article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41200 and 41400, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18736.1. Composting Component Objectives.

A statement of market development objectives to be achieved in the short-term and medium-term planning periods shall be provided in the Composting Component, as required by sections 41204 and 41404 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41200, 41204, 41400 and 41404, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18736.2. Composting Component Program Existing Conditions Description.

The description of the existing composting program shall include, but not be limited to, a description of existing local market development activities, including any government procurement programs, economic development activities, or consumer incentives conducted within the jurisdiction.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41200 and 41400, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18736.3. Evaluation of Composting Program Alternatives.

(a) Composting program alternatives that qualify toward achievement of the diversion mandates specified in sections 41780 and 41780.1 of the Public Resources Code shall include only those alternatives whose products result from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream or separated at a centralized waste processing facility.

(b) Composting alternatives do not include composting of solid waste at the site of generation by the generator, since such an alternative constitutes a source reduction method.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41201, 41202, 41401, 41402, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of subsection (a) and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18736.4. Selection of Composting Program.

(a) The Composting Component shall identify the end markets or end use which will be secured during the short-term period for the materials composted, using the selected program. In the event that such markets cannot be firmly identified, the component shall describe the methods by which the jurisdiction will secure the necessary markets. The identification of markets may be described in general terms. Planned development of markets at manufacturing facilities in the jurisdiction shall also be described.

(b) The Composting Component shall describe the measures to be taken if uneconomical market conditions occur beyond the jurisdiction's control, which would prevent the jurisdiction from satisfying the requirements of sections 41780 and 41780.1 of the Public Resource Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41200, 41204, 41400, 41404, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsection (b) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsection (b) and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18737. Special Waste Component.

The Special Waste Component shall include the requirements contained in sections 18733.1 through 18733.6 and 18737.1 and 18737.2 of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(c), 41250 and 41450, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18737.1. Special Waste Component Objectives.

For the initial SRRE each jurisdiction shall examine and select Special Waste Component objectives based upon data generated in the Solid Waste Generation Study, conducted pursuant to section 18722, of Article 6.1 of this chapter. The objectives shall include a plan to reduce the hazard potential of special wastes by waste type.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900(c), 41250 and 41450, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18737.2. Special Waste Component Existing Conditions Description.

(a) The description of the existing special waste program shall include, but not be limited to, a description of existing solid waste facilities which are permitted to handle or dispose of special wastes. Where applicable, the description shall include a discussion of other regulatory agency requirements, permits, or other documents associated with the operation of these facilities.

(1) regulatory agencies include, but are not limited to, regional water quality control boards, air quality management districts, and the Department of Toxics Substances Control.

(b) For the initial SRRE the jurisdiction shall provide a discussion on those special wastes identified in the Waste Generation Study conducted pursuant to section 18722, of Article 6.1 of this Chapter for which there is currently no permitted handling or disposal method within the jurisdiction.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41250 and 41450, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsections (a)(1)–(b) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsection (b), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18738. Household Hazardous Waste Component Specific Requirements.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 40900(c), 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18738.1. Household Hazardous Waste Component Objectives.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 40900(c), 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).

4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738.1, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18738.2. Household Hazardous Waste Existing Conditions Description.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738.2, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18738.3. Evaluation of Household Hazardous Waste Program Alternatives.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 40900(c), 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738.3, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18738.4. Selection of Household Hazardous Waste Program.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 40900(c), 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738.4, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18738.5. Implementation of Household Hazardous Waste Programs.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41280 and 41480, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including repeal of section 18738.5, transmitted to OAL 4–2–91 and filed 5–29–91 (Register 91, No. 37).

§ 18740. Education and Public Information Component.

(a) Component objectives. The Education and Public Information Component shall include a statement of educational and informational objectives for the short–term and medium–term planning periods.

(b) Existing program description. The component shall include a description of all existing educational and public information programs and activities within the jurisdiction which promote source reduction, recycling, composting, and the safe handling and disposal of solid waste.

(c) Selection of program alternatives. For the initial SRRE the component shall incorporate data compiled in the solid waste generation study conducted pursuant to Article 6.1 and the solid waste generation analysis of section 18732 of this Article to identify solid waste generators that will be targeted in educational and public information programs.

(d) Program implementation. The component shall include a program implementation discussion which:

(1) identifies those agencies or divisions thereof, organizations, and/or persons responsible for implementation;

(2) identifies required implementation tasks;

(3) establishes short–term and medium–term implementation schedules for tasks;

(e) Monitoring and evaluation. For each education and public information component program which involves recycling or composting programs that are operated or funded by a jurisdiction, the component shall:

(1) identify the methods to be used to measure achievement of the education and public information objectives identified pursuant to section (a), above;

(2) establish written criteria by which to evaluate program effectiveness;

(3) identify agencies or divisions thereof, organizations, and/or persons responsible for program monitoring, evaluation, and reporting;

(4) identify measures to be implemented if monitoring performed pursuant to section 18733.6(a) of this Article shows a shortfall in the attainment of the solid waste diversion objectives; and

(5) establish a program monitoring and reporting schedule.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40901, 41220 and 41420, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of subsection (e), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18744. Facility Capacity Component.

(a) For the initial SRRE the Solid Waste Facility Capacity Component shall identify and describe all existing permitted solid waste landfills and transformation facilities within the jurisdiction. This description shall contain the following:

(1) identification of the owner and operator of each permitted solid waste disposal facility;

(2) quantity and waste types of solid waste disposed;

(3) permitted site acreage;

(4) permitted capacity;

(5) current disposal fees; and

(6) for solid waste landfills, remaining facility capacity in cubic yards and years.

(b) The Solid Waste Facility Capacity Component shall include a solid waste disposal facility needs projection which estimates the additional disposal capacity, in cubic yards per year, needed to accommodate anticipated solid waste generation within the jurisdiction for a 15–year period commencing in 1991.

(1) The solid waste disposal capacity needs projection for the initial SRRE shall be calculated based upon the solid waste generation projection conducted in accordance with section 18722, of Article 6.1 of this Chapter.

(2) The disposal capacity needs projection for the 15 year period shall be calculated using the following equation:

ADDITIONAL CAPACITY

$$\text{Year n} = [\ (G + I) - (D + TC + LF + E)\ ]_{\text{Year n}}$$

where:

G = The amount of solid waste projected to be generated in the jurisdiction;

I = The amount of solid waste which is expected to be imported to the jurisdiction for disposal in permitted solid waste disposal facilities through interjurisdictional agreement(s) with other cities or counties, or through agreements with solid waste enterprises, as defined in section 40193 of the Public Resources Code.

D = The amount diverted through successful implementation of proposed source reduction, recycling, and composting programs.

TC = The amount of volume reduction occurring through available, permitted transformation facilities.

LF = The amount of permitted solid waste disposal capacity which is available for disposal in the jurisdiction, of solid waste generated in the jurisdiction.

E = The amount of solid waste generated in the jurisdiction which is exported to solid waste disposal facilities through interjurisdictional agreement(s) with other cities, counties or states, or through agreements with solid waste enterprises, as defined in section 40193 of the Public Resources Code.

n = each year of a 15 year period commencing in 1991. [iterative in one year increments]

(c) The Solid Waste Facility Capacity Component shall include discussions of:

(1) The solid waste disposal facilities within the jurisdiction which will be phased out or closed during the short–term and medium–term planning periods and the anticipated effect from such phase–out or closure on disposal capacity needs of the jurisdiction.

(2) Plans to establish new or expanded facilities for the short–term and medium–term planning periods and the projected additional capacity of each new or expanded facility.

(3) Plans to export waste to another jurisdiction for the short–term and medium–term planning periods and the projected additional capacity of proposed export agreements.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41260, 41460 and 41821, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (b) and (c), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including additional amendment of section heading and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18746. Funding Component.

(a) The Funding Component shall demonstrate that there is sufficient funding and allocation of resources for:

(1) program planning and development;

(2) implementation of programs in order to comply with the requirements of sections 41780 and 41780.1 of the Public Resources Code.

(b) The Funding Component shall provide cost estimates for component programs scheduled for implementation in the short–term planning period.

(1) The Funding Component shall identify revenue sources sufficient to support the component programs.

(2) The Funding Component shall identify sources of contingency funding for component programs.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41230, 41430, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsection (a)(2) and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 1–3–94 order, including additional amendment of subsection (a)(2) and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18748. Integration Component.

(a) The Integration Component shall explain how the Source Reduction, Recycling, Composting, and Special Waste components combine to achieve the 25 and 50 percent mandates specified in Public Resources Code sections 41780 and 41780.1. The Integration component shall include, but is not limited to, the following:

(1) a description of the solid waste management practices which fulfill the legislative goals of promoting integrated solid waste management in the following order of priority:

(A) source reduction;

(B) recycling and composting; and

(C) environmentally safe transformation and environmentally safe land disposal of solid wastes;

(2) an explanation of how the jurisdiction has integrated the components to maximize the use of all feasible source reduction, recycling and composting options;

(3) an explanation of how the components jointly achieve the diversion mandates in sections 41780 and 41780.1 of the Public Resources Code;

(4) an explanation of how priorities between components were determined, and

(5) an explanation of whether the jurisdiction has been designated, or plans to apply for designation, as a California Integrated Waste Management Board Recycling Market Development Zone.

(b) An integrated schedule shall be submitted in the Integration Component which shall include the following:

(1) a calendar scheduling all implementation tasks for new and expanded programs, commencing after the effective date of the Integrated Waste Management Act of 1989 through the short–term planning period, as identified in the components specified in sections 18733(a) and 18740 of this Article. The schedule shall include a short descriptive title for each task, the entity implementing the task, the task start date and milestone dates, and a schedule for funding source availability.

(A) implementation tasks are those tasks in each component which satisfy the requirements of sections 18733.5(b) and 18740(d) of this Article.

(2) the schedule shall also show the anticipated date of achievement of the solid waste diversion mandates specified in sections 41780 and 41780.1, Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 40052, 41001, 41002, 41301, 41302, 41780 and 41780.1, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90. For prior history see Registers 89, No. 1 and 83, No. 6.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsections (a), (a)(1), (a)(3) and NOTE and new subsection (a)(5) filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No.1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–3–94 order, including amendment of subsections (a), (a)(3)–(5) and (b)(2), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

Article 6.3. Household Hazardous Waste Elements

§ 18750. Scope.

The Household Hazardous Waste (HHW) Element shall specify the means by which each jurisdiction required to prepare and implement a HHW Element shall safely collect, recycle, treat and dispose of household hazardous wastes generated by households within the jurisdiction.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751. Household Hazardous Waste Element Specific Requirements.

The Household Hazardous Waste Element shall include the requirements contained in sections 18751.1 through 18751.6 of this Article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751.1. Household Hazardous Waste Element Goals and Objectives.

The HHW Element shall include statements which define the goals and objectives for the short–term and medium–term planning periods.

(a) HHW Element goals and objectives shall be consistent with the mandates of section 40051 of the Public Resources Code.

(b) Each jurisdiction shall examine and select household hazardous waste element goals and objectives based upon data generated in the Solid Waste Generation Study, conducted pursuant to section 18722, of Article 6.1 of this Chapter. The objectives shall include plans to source reduce and safely collect, recycle, treat and dispose of household hazardous waste generated within the jurisdiction.

(c) The HHW Element shall specify the time frame for achievement of each objective.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751.2. Household Hazardous Waste Existing Conditions Description.

All public agencies responsible for household hazardous waste (HHW) management must complete and submit either the CIWMB (Board) Form CIWMB 303a (1/06) entitled "Lead Agency Form 303a Household Hazardous Waste Collection Information For Fiscal Year ___/_____", or Form CIWMB 303b (1/06) entitled "Non–Lead Agency Form CIWMB 303b Household Hazardous Waste Collection Information For Fiscal Year ___/____", to the Board each year. Both forms are incorporated herein by reference and are located in Appendix A. Commencing with reports for Fiscal Year 2006/2007, Forms CIWMB 303a and CIWMB 303b shall be completed and submitted electronically to the Department of Toxic Substances Control each year, or, upon request to the CIWMB, the public agency may be exempted from filing electronically, and instead complete and submit a hard copy of either Form CIWMB 303a or CIWMB 303b. Form CIWMB 303a provides a description of the existing household hazardous waste program identifying the types and quantities of household hazardous wastes that are currently collected, reused, recycled, treated and/or otherwise managed and/or disposed through existing programs. Form CIWMB 303b provides only contact information for a non–lead agency, and provides, if applicable, for the types and quantities of universal waste collected and recycled by a non–lead agency.

The following are requirements for submitting Forms CIWMB 303a or CIWMB 303b:

(a) The reporting timeframe shall be July 1 of the previous fiscal year through June 30 of the current fiscal year, with the form required to be returned to the state by the first of October each year.

(b) The forms must be completed, to the extent applicable, whether or not waste was collected by a jurisdiction. If a public agency is not the lead agency collecting waste through a HHW program or a waste collection program was not conducted by their jurisdiction, only Form CIWMB 303b must be completed and submitted to the CIWMB.

(c) Each public agency acting as lead agency for Household Hazardous Waste collection must complete and submit one Form CIWMB 303a that includes all HHW program types including, but not limited to, permanent, temporary, recycle only, mobile, door–to–door, curbside (other than oil), and with a category designated as "Other" for additional program type identification.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 25218.10, Health and Safety Code. Reference: Sections 41500, 41510, 41750 and 47103, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
2. Amendment of subsection (a)(1) filed 6–14–93; operative 7–14–93 (Register 93, No. 25).
3. Amendment of subsection (a)(1) and NOTE filed 9–6–95; operative 10–6–95 (Register 95, No. 36).
4. Change without regulatory effect amending subsection (a)(1) filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
5. Amendment filed 4–13–2007; operative 5–13–2007 (Register 2007, No. 15).

§ 18751.2.1.

The following terms used in this Article are defined as follows:

(a) Program types listed in Section 18751.2(c) are defined in Health and Safety Code 25218.1;

(b) With the exception of electronic waste, waste types listed in Section F of Form CIWMB 303a are defined in 49 Code of Federal Regulations Section 172.101, and

(c) Management Methods listed in Section F of Form CIWMB 303a have the following definitions:

(1) Destructive Incineration — treatment by thermal destruction at a high temperature hazardous waste incinerator where the physical destruction is the sole intent of the treatment process.

(2) Fuel Incineration — treatment by thermal destruction where the waste, either by itself or blended with another material, is burned to recover its potential thermal energy.

(3) Landfill — disposal of a waste in the ground (and in this case) at a hazardous waste landfill.

(4) Neutralization — treatment by chemically adjusting the pH of the waste so that the waste can be discharged into a publicly owned treatment works (does not apply if after neutralization, the waste is still hazardous and is sent for disposal or treatment by one of the other methods).

(5) Recycled —waste is sent for resource recovery where the raw materials used for making the material before it became a waste are recoverd to make new materials of the same or different nature (does not include fuel incineration).

(6) Reused — waste is used without further treatment or handling for the original intended purpose of the material before it became a waste.

(7) Stabilization — treatment where waste is chemically stabilized into a solid or semi–solid state such that it no longer exhibits hazardous characteristics and can be managed as non–hazardous waste (does not apply if after stabilization, waste is still hazardous and is sent for disposal or treatment by one of the other methods described here).

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 25218.10, Health and Safety Code. Reference: Sections 41500, 41510, 41750 and 47103, Public Resources Code.

HISTORY

1. New section filed 4–13–2007; operative 5–13–2007 (Register 2007, No. 15).

§ 18751.3. Evaluation of Household Hazardous Waste Program Alternatives.

The HHW Element shall include an evaluation of the Program alternatives which have been considered for local implementation consistent with the objectives of section 18751.1 of this Article, including but not limited to the following:

(a) Program alternatives including, but not limited to:

(1) collection alternatives, as follows:

(A) periodic community–wide, or neighborhood household hazardous waste collection;

(B) permanent household hazardous waste drop–off sites;

(C) mobile household hazardous waste collection; and

(D) local activities, actions or efforts to encourage the formation of privately or publicly operated fee–for–service, door–to–door, or curbside household hazardous waste collection alternatives.

(2) load–checking programs for household hazardous waste at all solid waste management facilities; and

(3) waste exchange, reuse and/or recycling alternatives for household hazardous wastes including, but not limited to, alternatives for waste oils, paints, and batteries.

(b) Each alternative considered shall be evaluated in terms of the following criteria and any other local considerations:

(1) hazards, as defined by Section 18720(a)(26) of this Chapter, which are created by the alternative considered;

(2) ability to accommodate changing economic, technological, and social conditions;

(3) whether it can be implemented in the short–term and medium–term planning periods; and

(4) the need for expanding existing facilities or constructing new facilities to support implementation of the alternative.

(5) In addition, the evaluation shall include, but not be limited to, the following:

(A) a discussion of the consistency of each alternative with applicable local policies, plans, and ordinances based upon local conditions;

(B) a discussion of any institutional barriers to local implementation of each alternative;

(C) an estimate of the costs related to the implementation of each alternative being evaluated for the short–term and medium–term planning periods; and

(D) a discussion of the availability of local, regional, state, national, and international end–uses for the materials which would be diverted through implementation of each alternative being considered.

(6) effectiveness in reducing either the volume or weight of HHW generated.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751.4. Selection of Household Hazardous Waste Program.

(a) The HHW element shall identify and describe the diversion alternatives which have been selected for the jurisdiction's HHW program, including existing diversion alternatives, expansion of existing diversion alternatives, and new diversion alternatives, which will be implemented to meet the goals and objectives of the element. This selection shall be based upon the evaluations conducted pursuant to section 18751.3 of this Article. The program description shall include, but not be limited to, the following:

(1) a discussion of each diversion alternative selected for the program identifying why the alternative was selected for implementation. This discussion shall be based upon the data compiled in the solid waste generation study conducted pursuant to Article 6.1, of this Chapter; information contained in the solid waste generation analysis required by section 18732 of Article 6.2; and the evaluation conducted pursuant to section 18751.3 of this Article.

(2) as applicable to the element, a listing of the anticipated local, regional, state, national, and/or international end–uses for diverted materials based upon the evaluation of the diversion alternatives required by section 18751.3(b)(5)(D) of this Article;

(3) as applicable to the element, a description of the proposed methods for handling and disposal which may be necessary to implement the selected program; and

(4) a description of any facilities to be utilized for the implementation of the program which section 18751.2 of this Article has shown must be expanded or built to support implementation of the selected program identified in Section 18751.3 of this Article.

(b) In addition to the above requirements, the program description shall include the following:

(1) an identification of the types and quantities of household hazardous wastes anticipated to be collected, recycled, and/or disposed through proposed programs using household hazardous waste categories contained in form CIWMB–303 "Household Hazardous Waste Collection Information for Fiscal Year __/__" (5/95), which is incorporated herein by reference (See Appendix A.):

(A) where applicable, specification of the targeted Public participation goals by Percent of the Population of the affected jurisdiction for each Preferred program alternative;

(2) a description of recycling and/or reuse efforts to be used in conjunction with a proposed household hazardous waste program;

(3) a description of all proposed cooperative and/or multi–jurisdictional household hazardous waste program implementation efforts/actions/activities in which the jurisdiction intends to participate.

NOTE: Authority cited: Section 40502, Public Resources Code and Section 25218.10, Health and Safety Code. Reference: Sections 41500, 41510, 41750 and 47103, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
2. Amendment of subsection (b)(1) filed 6–14–93; operative 7–14–93 (Register 93, No. 25).
3. Amendment of subsection (b)(1) and NOTE filed 9–6–95; operative 10–6–95 (Register 95, No. 36).
4. Change without regulatory effect amending subsection (b)(1) and moving form to section 18831, appendix A filed 4–2–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

§ 18751.5. Implementation of Household Hazardous Waste Program.

(a) The element shall contain a program implementation schedule that includes, but is not limited to, the following:

(1) identification of government agencies and divisions thereof, organizations, and/or persons responsible for implementation of the selected program;

(2) identification of the tasks necessary to implement the selected program; and,

(3) identification of a short–term and medium–term planning period implementation schedule addressing each task identified in paragraph (a)(2) of this section which specifies the date each task will be completed.

(b) The jurisdiction may use technical assistance, program guidelines, and model operation plans, provided by the Board, for community household hazardous waste collection programs in the implementation of its household hazardous waste program.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500, 41510, 47100 through 47106, and 41750, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

[The next page is 806.113.]

§ 18751.6. Monitoring and Evaluation.

The element shall contain an explanation of how the program is to be monitored and evaluated as follows:

(a) identify the methods chosen from (b) of this section, which are being used to monitor achievement of the jurisdiction's objectives, as described in Section 18751.1, including but not limited to, the success in reducing or eliminating household hazardous waste.

(b) each jurisdiction shall use one or more of the following methods to monitor and evaluate the diversion objectives achieved within the jurisdiction:

(1) a Waste Generation Study consistent with the waste generation study prepared under section 18722, of Article 6.1 of this Chapter;

(2) targeted solid waste characterization studies involving all or a representative sample of solid waste landfill facilities, used by a jurisdiction, to measure changes in the volume, weight and hazard of specific materials, with adjustments or shifts in household hazardous waste generation resulting from source reduction;

(3) an assessment of any changes in the design, production, distribution, sale, and/or use of selected products and packages which affect household hazardous waste generation;

(4) monitoring of accurately maintained records of the volumes and types of HHW collected; or

(5) another method for which prior written approval has been given by the Board.

(c) Each jurisdiction shall provide the following information based upon the specific monitoring and evaluation methods selected for each program:

(1) written criteria for evaluating the program's effectiveness;

(2) identification of agencies or divisions thereof, organizations, and/or persons responsible for the program's monitoring, evaluation, and reporting;

(3) identification of known monitoring and evaluation funding requirements, revenues, and revenue sources; and

(4) identification of measures to be implemented if monitoring shows a shortfall in the attainment of the objectives of the element. Such measures may include, but are not limited to, provisions for:

(A) increasing the frequency of program monitoring and review,

(B) modification of the objectives, or,

(C) modification of the Program to increase its effectiveness.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751.7. Education and Public Information.

(a) Objectives. The education and public information section of the element shall include a statement of educational and informational objectives for the short–term and medium–term planning periods.

(b) Existing program description. A description of all known existing educational and public information programs and activities within the jurisdiction which promote the source reduction, reuse, recycling and safe disposal of household hazardous waste shall be included.

(c) Identification of Preferred Alternatives. The public information and education section shall list the preferred alternatives both existing and proposed which will be maintained or implemented in the short and medium term Planning Periods to achieve the objectives of this section.

(d) Program implementation. A program implementation discussion which includes the following shall be submitted:

(1) identification of community audiences to be targeted in educational and public information programs;

(2) identification of those agencies or divisions thereof, organizations, and/or persons responsible for implementation;

(3) identification of the required implementation tasks;

(4) short–term and medium–term implementation schedules for tasks listed in (3) above;

(5) identification of all public and private program implementation costs, revenues, and revenue sources necessary for program implementation; and,

(6) public information and education alternatives to promote the use of safer substitute products or practices in households.

(e) Monitoring and evaluation. The section shall:

(1) identify the methods to be used to measure achievement of the education and public information objectives identified pursuant to section (a), above;

(2) establish written criteria by which to evaluate program effectiveness;

(3) identify agencies or divisions thereof, organizations, and/or persons responsible for program monitoring, evaluation, and reporting;

(4) identify monitoring and evaluation funding requirements, revenues, and revenue sources;

(5) identify measures to be implemented if monitoring performed pursuant to section 18751.6(a) of this Article shows a shortfall in the attainment of the household hazardous waste disposal objectives; and

(6) establish a program monitoring and reporting schedule.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

§ 18751.8. Funding.

(a) The jurisdiction shall demonstrate that there is sufficient funding and allocation of resources for:

(1) program planning and development;

(2) implementation of programs in order to comply with the requirements of sections 41500 and 41510 of the Public Resources Code.

(b) The funding section shall provide cost estimates for element programs scheduled for implementation in the short–term planning period, as follows:

(1) The funding section shall identify revenue sources sufficient to support the element programs.

(2) The funding section shall identify sources of contingency funding for element programs in the event that preferred revenue resources are insufficient.

(c) The funding section shall include a table which summarizes Program implementation costs, including public and private costs, revenues, and revenue sources necessary for implementation of the selected program.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41500 and 41510, Public Resources Code.

HISTORY

1. New section filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).

Article 6.4. Nondisposal Facility Element

§ 18752. Scope.

(a) The Nondisposal Facility Element (NDFE) shall identify the nondisposal facilities to be used by a jurisdiction to assist in reaching the diversion mandates of Public Resources Code Section 41780.

(b) The NDFE shall include the items identified in Sections 18752 through 18754.5 of this chapter.

(c) For the purpose of this Article, a nondisposal facility is any solid waste facility required to obtain a permit pursuant to Article 1 (commencing with Section 44001) Chapter 3, Part 4 of the Public Resources Code, except a disposal facility or a transformation facility.

(d) The NDFE shall reflect information available to a jurisdiction at the time of the development of the document. The NDFE may also contain additional information as determined by a jurisdiction.

(e) A jurisdiction may include other facilities not defined as nondisposal facilities (i.e. recycling centers, drop–off centers, household hazardous waste facilities, etc.).

(f) For the purpose of this Article, a jurisdiction is a city, county, city and county, or regional agency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41730, 41731, 41732, 41733 and 41750.1, Public Resources Code.

HISTORY

1. New article 6.4 and section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–3–94 order, including amendment of section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18753. Description of Nondisposal Facilities within a Jurisdiction.

The NDFE shall identify all existing, expansion of existing, and proposed nondisposal facilities located within a jurisdiction which recover for reuse or recycling at least five percent of the total volume of material received by the facility.

(a) Each facility description shall include, but is not limited to:

(1) type of facility;

(2) facility capacity;

(3) anticipated diversion rate or expected diversion rate from the total amount of the waste that the facility receives; and,

(4) participating jurisdictions.

(b) Each facility location description may include, but is not limited to:

(1) address of the facility; or,

(2) description of the general area, (include a land use map, zoning map, or other type of planning map).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41730, 41731, 41732, 41733 and 41750.1, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18753.5. Description of Nondisposal Facilities outside a Jurisdiction.

The NDFE shall identify all existing, expansion of existing, and proposed nondisposal facilities which a jurisdiction, plans to utilize, but which are not located within the jurisdiction, and which recover for reuse or recycling at least five percent of the total volume of material received by the facility.

(a) Each facility description shall include, but is not limited to:

(1) type of facility;

(2) estimated amount of the waste the jurisdiction will transport to the facility;

(3) anticipated diversion rate or expected diversion rate from the total amount of the waste that the facility receives; and,

(4) location of facility.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41730, 41731, 41732, 41733 and 41750.1, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18754. Description of Transfer Stations within a Jurisdiction.

The NDFE shall identify existing, expansion of existing, and proposed transfer stations located within a jurisdiction, which recover less than five percent of the volume of materials received for reuse or recycling.

(a) Each facility description shall include, but is not limited to:

(1) name of facility; and,

(2) participating jurisdictions.

(3) facility capacity.

(b) Each facility location description may include, but is not limited to:

(1) address of the facility; or,

(2) description of the general area, (include a land use map, zoning map, or other type of planning map).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41730, 41731, 41732, 41733 and 41750.1, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18754.5. Description of Transfer Stations outside a Jurisdiction.

The NDFE shall identify existing, expansion of existing, and proposed transfer stations to be used by a jurisdiction but not located within the jurisdiction, which recover less than five percent of the volume of materials received for reuse or recycling.

(a) Each facility description shall include, but is not limited to:

(1) name of facility; and,

(2) location of facility.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41730, 41731, 41732, 41733 and 41750.1, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 1). A Certificate of Compliance must be transmitted to OAL by 1–3–97 per Public Resources Code section 40502(c) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

Article 6.5. Siting Elements

§ 18755. General Requirements.

(a) The Siting Element shall demonstrate that there is a countywide or regionwide minimum of 15 years of combined permitted disposal capacity through existing or planned solid waste disposal and transformation facilities or through additional strategies.

(b) The Siting Element shall describe and identify the areas, numbers and types of new solid waste disposal and transformation facilities, as well as the expansion of existing solid waste disposal and transformation facilities necessary to provide a minimum of 15 years of combined permitted disposal capacity.

(c) If the requirements of subdivision (b) of this section cannot be demonstrated, then strategies shall be discussed for the transformation, disposal, or diversion of excess waste.

(d) The Siting Element shall include the items identified in sections 18755.1 through 18756.7 of this article.

(e) A "Siting Element" may be prepared by a regional agency when the regional agency is composed of two or more counties and all incorporated cities of those counties.

(f) For the purposes of this article, "countywide" shall be defined as including the incorporated cities within the county and the unincorporated areas of the county. For purposes of this article, "county" shall include the Board of Supervisors as the legislative and executive body of county government, and any designated agency responsible for solid waste management.

(g) For the purposes of this article, "regionwide" shall be defined as including the member agencies of the regional agency. For the purposes of this article, a "regional agency" shall be the governing entity created by a voluntary agreement between cities and counties for the purpose of

complying with Part 2 of Division 30 of the Public Resources Code. A city or county which is a party to such an agreement shall be considered a "member agency" of the regional agency. A regional agency may authorize one district, as defined in subdivision (a) of Section 41821.2 of the Public Resources Code, to be included as a member of the regional agency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900, 40970–40972, 40977, 41700–41721.5, 41750.1 and 41821.2, Public Resources Code.

HISTORY

1. New article 6.5 and section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).
2. Change without regulatory effect amending subsection (g) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

§ 18755.1. Goals and Policies.

(a) The Local Task Force (LTF) shall develop goals, policies, and procedures to provide guidance to the county to prepare the Siting Element. Based upon this guidance, the Siting Element shall include a statement on the goals and policies established by the county.

(b) The LTFs of each county, which are member agencies of a regional agency formed pursuant to section 18776(b) of this chapter, shall develop goals, policies, and procedures to provide guidance to the regional agency to prepare the Siting Element. Based upon this guidance, the Siting Element shall include a statement on the goals and policies of the regional agency.

(c) The goals shall be consistent with the mandates of Public Resources Code section 40051. The goals shall describe the method for the environmentally safe disposal of solid waste generated within the boundaries of the county and regional agency.

(d) The policies shall specify any programs, regulatory ordinances, actions, or strategies that may be established to meet the goals described in subdivision (c) of this section and to assist in the siting of solid waste disposal facilities. An implementation schedule shall be included which identifies tasks necessary to achieve each selected goal.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40950(d), 41700 and 41701(a), Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18755.3. Disposal Capacity Requirements.

(a) Each county and regional agency, with assistance from the Local Task Force, shall include documentation in the Siting Element of the following information:

(1) the January 1, 1990 disposal capacity in cubic yards and in tons established pursuant to CCR 18777(b);

(2) the existing disposal capacity in cubic yards and in tons in the year the Siting Element is prepared; and

(3) the disposal capacity in cubic yards and in tons in any year the Siting Element is revised.

(b) The anticipated disposal capacity needs shall be described in cubic yards and tons, on an annual basis and aggregated for a minimum 15–year period, beginning with the year in which the Siting Element is prepared, and any year the Siting Element is revised.

(c) Area(s) shall be selected where solid waste disposal facilities are envisioned to be expanded or sited and constructed for the purpose of meeting a required minimum of 15 years of combined permitted disposal capacity. Each county and regional agency shall consider the following in determining the areas where solid waste disposal facilities are planned to be expanded or sited and constructed:

(1) the total amount of solid waste generated, expressed in cubic yards and in tons for volumetric capacity for the required 15–year period;

(2) the existing remainder of combined permitted disposal capacity in cubic yards and in tons for the required 15–year period; and

(3) an estimation of the total disposal capacity in cubic yards and in tons needed to meet a minimum of 15 years of combined permitted disposal capacity.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41701(b), (c) and (d), and 41791, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18755.5. Description of Existing Solid Waste Disposal Facilities.

(a) The Siting Element shall include an identification of each permitted solid waste disposal facility located countywide and regionwide. The description shall include, but not be limited to, the following information for each facility:

(1) the name of the facility and the name of the facility owner and operator;

(2) the facility permit number, permit expiration date, date of last permit review, and an estimate of remaining site life, based on remaining disposal capacity;

(3) the maximum permitted daily and yearly rates of waste disposal, in tons and cubic yards;

(4) the average rate of daily waste receipt, in tons and cubic yards;

(5) the permitted types of wastes; and,

(6) the expected land use for any site being closed or phased out within the 15–year planning period.

(b) The Siting Element description shall include a map showing each existing permitted solid waste disposal facility countywide and regionwide. The map shall be drawn to scale and the scale legend included on the map sheet. The type of map may be a 7.5 or 15 minute USGS quadrangle.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 50001, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18756. Criteria for Establishing New or for Expanding Existing Solid Waste Disposal Facilities.

(a) To establish a new solid waste disposal facility or to expand an existing solid waste disposal facility, the county and regional agency shall describe the criteria to be used in the siting process for each facility. The criteria shall include, but not be limited to, a description of the major categories of Environmental Considerations, Environmental Impacts, Socioeconomic Considerations, Legal Considerations, and additional criteria as developed by the county, cities, regional agency and member agencies. The following are examples of criteria that may be considered within those major categories:

(1) Environmental Considerations (for example: geology and solids including faulting and seismicity, ground settlement, surface hydrology and ground water, quantity and quality of ground water, surface water, surface water contamination, drainage patterns, etc.);

(2) Environmental Impacts (for example: air quality including climatic and meteorological conditions and emissions, visibility, cultural resources including regional setting, inventory and significance, paleontological resources including inventory and significance, vegetation, and wildlife, etc.);

(3) Socioeconomic considerations (for example: transportation including local and regional transportation systems, highways and major roadway corridors, rail transportation and corridors, land use including regional and local land uses such as military use, mineral extraction, agriculture, recreation/tourism, compatibility with existing and future land uses, consistency with county general plan(s) and future post–closure uses, economic factors including estimates of development costs and operational costs, etc.);

(4) Legal considerations (for example: federal, state, and local minimum standards and permits, liabilities, and monitoring, etc.);

(5) Additional criteria as may be included by the county, cities, regional agency and member agencies approving the Siting Element.

(b) The Siting Element shall describe the process instituted countywide or regionwide to confirm that the criteria set forth in (a)(1–5) of this section are included as part of the solid waste disposal facility siting process.

(c) The countywide Siting Element shall be approved by the county and the cities as described in Public Resources Code section 41721. The regionwide Siting Element shall be approved by the regional agency as described in section 18783(c) of this chapter. The Siting Element shall include: a resolution from each jurisdiction and member agency approving or disapproving of the Siting Element or any proposed amendment to the element; and a record of any jurisdiction or member agency failing to act upon the Siting Element.

(d) No solid waste disposal facility in the Siting Element shall be established that does not satisfy the minimum criteria that are adopted in the Siting Element pursuant to section 18756(a) of this article.

(e) A solid waste disposal facility not described within the Siting Element shall not be established unless an amendment to the Siting Element has been approved identifying and describing the facility, and the date of its inclusion in the element pursuant to PRC section 41721.5.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41700, 41701, 41702, 41704 and 50001, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18756.1. Proposed Facility Location and Description.

(a) The Siting Element shall include a description of each proposed new solid waste disposal facility and a description of each proposed expansion of an existing solid waste disposal facility for each county and regional agency included in the Siting Element which complies with the criteria identified in Section 18756 of this article. The description shall include the type of facility, location, size, volumetric capacity of the facility expressed in cubic yards and in tons, life expectancy (years), expansion options of the existing or proposed facility, and post–closure uses.

(1) Each Siting Element shall include one or more maps indicating the location of each proposed solid waste disposal facility and adjacent and contiguous parcels. The map(s) shall be drawn to scale and include the scale on the map sheet. The type of map(s) may be a 7.5 or 15 minute USGS quadrangle.

(b) A description shall be provided in the Siting Element of how each proposed solid waste disposal facility contributes to and maintains for each county or regional agency included in the Siting Element the minimum of 15 years of combined permitted disposal capacity as described in CCR 18755(a) of this article and is consistent with the diversion goals of Public Resources Code section 41780.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41700, 41701, 41702, 41704 and 41780, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18756.3. Consistency with City and County General Plans for New or Expanded Solid Waste Disposal Facilities.

(a) Reserved areas for proposed new or the expansion of existing solid waste disposal facilities shall be identified in the Siting Element. Verification shall be made that the expanded or proposed facilities are located in areas where the land use is designated or authorized for solid waste disposal facilities and that the areas are consistent with the applicable city and county general plans. Verification of general plan consistency shall include a resolution, notarized statement, or affidavit from each applicable city and the county. Proposed areas that are consistent with the current city and county general plans shall be reserved pursuant to the requirements of Public Resources Code sections 41702 and 41720.

(b) Proposed areas that are not situated in, coextensive with, or adjacent to an area authorized for land use as a solid waste disposal facility, within an applicable city and county general plan, may be "tentatively reserved" for future or expanded solid waste disposal facilities. Proposed areas that are inconsistent with applicable city and county general plans shall be tentatively reserved pursuant to the requirements of Public Resources Code sections 41710 through 41712.

(c) Proposed areas included in the Siting Element may be identified as "tentatively reserved" in the initial filing of a Countywide and Regionwide Integrated Waste Management Plan, as determined by Public Resources Code section 41791. However, by the first five–year revision of the Countywide and Regionwide Integrated Waste Management Plan all areas identified to assure the minimum of 15 years of combined permitted disposal capacity as described in CCR 18755(a) of this article must meet the requirements of Public Resources Code section 41702.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41702, 41704, 41710–41712 and 41720, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18756.5. Strategies for Disposing of Solid Waste in Excess of Capacity When New or Expanded Sites Are Not Available.

(a) The Siting Element shall provide an analysis describing the reasons why there are not available locations for establishing new or expanding existing solid waste disposal facilities within each county or regional agency included in the Siting Element. This analysis shall include a determination of whether the inability to establish new or to expand existing solid waste disposal facilities is due to the lack of locations with the appropriate physical or environmental site characteristics or because of other considerations; and,

(b) If new or expandable solid waste disposal facilities are not available, or are not sufficient to meet countywide or regionwide needs, each county and regional agency shall include strategies for disposing of solid waste. The discussion of strategies shall include, but is not limited to, the following:

(1) A description of the types (residential, commercial, industrial, and special) and quantities in cubic yards and in tons of waste in excess of remaining volumetric capacity of existing solid waste disposal facilities;

(2) A description of the diversion or export programs which will be implemented to safely handle and divert or dispose of excess solid waste. The description shall identify the existing solid waste disposal facilities, including those outside of the county or regional agency, that will be used to implement these strategies. The description shall document how the proposed programs shall provide the county or regional agency with sufficient disposal capacity to meet the required minimum of 15 years of combined permitted disposal capacity as described in CCR 18755(a) of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41703, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

§ 18756.7. Siting Element Implementation.

(a) The Siting Element shall include, but not be limited to, the following:

(1) identification of local government agencies, Local Task Forces, regional agencies, organizations, and any others, responsible for implementing the countywide or regionwide solid waste disposal facility siting program;

(2) implementation schedules addressing each task identified in Section 18755.1(d) for a minimum of 15 years beginning with the year in which the element is prepared; and,

(3) identification of revenue sources sufficient to support the administration and maintenance of the countywide or regionwide solid waste disposal facility siting program.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900 and 41700, Public Resources Code.

HISTORY

1. New section filed 7–15–94; operative 8–15–94 (Register 94, No. 28).

Article 6.6. Countywide and Regional Agency Integrated Waste Management Plans

§ 18757. General Requirements.

(a) The Countywide Integrated Waste Management Plan (CIWMP) shall include the following:

(1) for a county with no regional agency within its boundaries, the Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs), and Nondisposal Facility Elements (NDFEs) for the county and each city within the county, and the Siting Element and Summary Plan;

(2) for a county composed of one or more regional agencies:

(A) a SRRE, HHWE, and NDFE for each city that is not a member agency of the regional agency and for the county if it is not a member agency of the regional agency;

(B) a SRRE, HHWE, and NDFE for each city that is a member agency of the regional agency and for the county if it is a member agency of the regional agency, or the SRRE, HHWE, and NDFE for the regional agency, if the regional agency has elected to prepare one or more of these as regional documents; and

(C) a countywide Siting Element and Summary Plan.

(b) The Regional Agency Integrated Waste Management Plan (RAIWMP) shall include the following:

(1) for a regional agency composed of two or more counties and all of the cities within those counties, either:

(A) a SRRE, HHWE, and NDFE for each city and county which are member agencies of the regional agency and the Siting Element and Summary Plan for each county; or

(B) a SRRE, HHWE, and NDFE, Siting Element, and Summary Plan for the regional agency.

(2) for a regional agency composed of more than one county, but which does not encompass all of the cities within those counties, a SRRE, HHWE, and NDFE for the regional agency;

(3) for a regional agency composed of more than one county, and which includes all of the cities and the unincorporated area within at least one of those counties, but not all of the cities within the other county(ies), a SRRE, HHWE, and NDFE for the regional agency, a Siting Element and Summary Plan for each county that is wholly encompassed by the regional agency.

(c) The Summary Plan shall include the items identified in sections 18757.1 through 18758 of this article.

(d) For the purposes of this article, "countywide" shall be defined as including the incorporated cities within the county and the unincorporated areas of the county. For purposes of this article, "county" shall include the Board of Supervisors as the legislative and executive body of county government, and any designated agency responsible for solid waste management.

(e) For the purposes of this article, "regionwide" shall be defined as including the member agencies of a regional agency. For the purposes of this article, "Regional Agency" shall be the governing entity created by a voluntary agreement between cities and counties to carry out the mandates of Public Resources Code section 41780. A city or county which is party to such an agreement shall be considered a "member agency" of the Regional Agency. A regional agency may authorize one district, as defined in subdivision (a) of Section 41821.2 of the Public Resources Code, to be included as a member of the regional agency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40977, 41750–41760 and 41821.2, Public Resources Code.

HISTORY

1. New article 6.6 and section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

2. Change without regulatory effect amending subsection (e) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

§ 18757.1. Goals and Objectives.

The Local Task Force (LTF) shall develop goals, policies, and objectives to provide guidance to the county or regional agency in coordinating countywide and regionwide diversion programs, marketing strategies, and disposal strategies for the medium–term planning (1996–2000) period. Based upon this guidance, the Summary Plan shall include a statement on the goals, policies, and objectives established by the county or regional agency.

(a) The goals shall be consistent with the mandates of Public Resources Code section 40051. The goals shall express plans for integrating strategies aimed towards reducing, diverting, marketing, and safely handling and disposing of all solid waste generated countywide or regionwide.

(b) The Summary Plan shall identify policies within the Source Reduction and Recycling Elements and Household Hazardous Waste Elements that facilitate the reduction of solid waste for incorporated cities and the unincorporated area of the county or the regional agency.

(c) The Summary Plan shall contain specific objectives for achievement of the goals stated in subdivision (a) of this section. These objectives shall allow for measurements of progress made toward achieving the goals by including an implementation schedule which identifies specific tasks and milestones necessary to achieve each objective.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41750 and 41751, Public Resources Code.

HISTORY

1. New section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

§ 18757.3. County and Regional Agency Profile and Plan Administration.

The Summary Plan shall include:

(a) A general countywide or regionwide description including, but not limited to, topography, major roadways, city boundaries, and climate.

(b) A summary of important demographic data, including, but not limited to, population, ethnicity, average age and income of the citizens, housing, seasonal demographic fluctuations, and transportation patterns.

(c) A description of the governmental solid waste management infrastructure, including all local jurisdiction waste management entities, solid waste management authorities or districts, and any other regional agencies responsible for countywide or regionwide waste handling and/or disposal.

(d) An identification of the entity(ies) responsible for the following Plan–related functions: public information; budgeting; implementation of a solid waste management program; and, administration (such as maintenance, revision, and coordination of Plan–related documents).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41751, Public Resources Code.

HISTORY

1. New section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

§ 18757.5. Description of Current Solid Waste Management Practices.

The Summary Plan shall describe the current or most recent countywide or regionwide solid waste management practices.

(a) The Summary Plan shall contain a description of all factors affecting the current collection, removal, and disposal of solid wastes. This description shall include, but not be limited to:

(1) service areas;

(2) designation of territories served through franchises, permits, contracts, or governmental services;

(3) quantity of waste collected in each jurisdiction of the CIWMP or RAIWMP area (tons and cubic yards per day/year);

(4) a description of storage and transportation needs and existing and anticipated methods for handling the collected materials targeted for recycling.

(5) final destination of collected wastes (e.g., landfill, transformation, exportation), by quantity (tons and cubic yards).

(b) The Summary Plan shall identify all permitted solid waste facilities located countywide or regionwide. This description shall include, but not be limited to, the following information:

(1) Facility name and location; and

(2) A map showing existing permitted solid waste facilities countywide or regionwide. The map should be drawn to scale and the scale and legend included on the map sheet. The map may be a 7.5 or 15 minute USGS quadrangle.

(c) The Summary Plan may include a description of waste diversion facilities located countywide or regionwide that are exempt or have re-

ceived an exclusion from a solid waste facilities permit, to the extent practicable. For each facility this description should include:

(1) the reason for exemption or exclusion;

(2) the estimated amount and type of material recovered/processed; and,

(3) the operator(s) and owner(s).

(d) The Summary Plan shall include, for countywide or regionwide programs, a description of Recycling Market Development Zones, and applicable strategies for processing and/or marketing secondary materials, including forming regional secondary materials marketing associations and joining associations outside the jurisdictional boundaries. The description shall discuss the county's or regional agency's role in developing markets.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41751, Public Resources Code.

HISTORY

1. New section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

§ 18757.7. Summary of Source Reduction and Recycling Elements, Household Hazardous Waste Elements and Nondisposal Facility Elements.

The Summary Plan shall:

(a) Summarize the types of programs planned in the Source Reduction and Recycling Elements by component from all the jurisdictions. This summary shall include, but is not limited to, the following:

(1) a listing and description of the planned and current diversion programs;

(2) a listing and identification of all planned contingency programs and measures; and

(3) a listing of targeted materials and marketing strategies, by program.

(b) Summarize the types of programs planned in the Household Hazardous Waste Elements from all jurisdictions. This summary shall include, but is not limited to, the following:

(1) a listing and identification of all planned and contingency programs and measures; and

(2) a listing of targeted materials and marketing strategies, by program.

(c) List the types and numbers of facilities planned in the Nondisposal Facility Elements from all jurisdictions and identify which jurisdictions are served by or use the facility(ies).

(d) Describe the coordination or consolidation of programs identified in subdivisions (a) and (b) of this section to include the following:

(1) identification and description of programs that were coordinated or consolidated and those programs that may be coordinated or consolidated in the future into countrywide or regionwide programs; and

(A) implementation schedules for the coordination or consolidation of individual jurisdiction's programs into countywide or regionwide programs.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41751, Public Resources Code.

HISTORY

1. New section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

§ 18758. Countywide and Regional Agency Integrated Waste Management Plan Financing.

The Summary Plan shall:

(a) Provide cost estimations for the countywide or regionwide programs and facilities scheduled for implementation and use.

(b) Summarize funding sources and allocation of revenues for all program and facility planning and implementation tasks identified in the Summary Plan.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41751, Public Resources Code.

HISTORY

1. New section filed 7–12–94; operative 8–11–94 (Register 94, No. 28).

Article 7. Procedures for Preparing and Revising City, Regional Agency and County Source Reduction and Recycling Elements, and Household Hazardous Waste Elements and City and County Nondisposal Facility Elements

§ 18760. Applicability.

(a) The procedures for preparing Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs) and Nondisposal Facility Elements (NDFEs) apply to the counties, cities, joint power authorities, regional agencies, special districts, or other agencies which are designated by the cities or counties, and are responsible for preparing these Elements.

(1) Cities, counties and cities which are also counties may enter into agreements to prepare and implement the SRREs, HHWEs and NDFEs which are specific to each jurisdiction.

(2) A city, county or a city and county shall be held accountable for implementation of the specified goals and programs of its SRRE and HHWE.

(b) For the purposes of this article, a jurisdiction is a city, county, city and county, or regional agency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40002, 40950, 40971 through 40975, 41000, 41300, 41500, 41510, 41730, 41731, 41813, 41850 and 41823, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a)(1), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of article heading filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of article heading, section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Certificate of Compliance as to 1–3–94 order, including amendment of subsections (a)(1) and (b), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18761. Local Task Force (LTF).

(a) Establishment. Each county board of supervisors, and a majority of the cities within the county which contain a majority of the population in

the county, shall submit written documentation to the Board approving the membership of their LTF, within 30 days after establishment of the LTF.

(1) The documentation submitted to the Board shall denote the identity of the members in the LTF, and whether the members represent the gov-

ernmental or the private sectors, or other entities or groups. The documentation shall define the terms of membership for each member.

(2) The terms of membership shall be determined by the county board of supervisors and a majority of the cities within the county which contain a majority of the population in the county.

(3) After its establishment, each LTF shall inform the Board of how frequently it intends to meet.

(b) Role of the LTF. The LTF shall advise jurisdictions responsible for the SRRE, HHWE and NDFE preparation, and review goals, policies, and procedures for jurisdictions, which, upon implementation, will aid in meeting the solid waste management needs of the county, as well as the mandated source reduction and recycling requirements of Public Resources Code section 41780.

(1) The LTF shall assist and advise in the review of the SRRE, HHWE, and NDFE, and shall assist jurisdictions in the implementation of the SRRE, HHWE, and NDFE.

(2) The LTF shall provide technical guidance and information regarding source reduction, waste diversion, and recycling to local jurisdictions during preparation and revision of the SRRE, HHWE and NDFE. Such information may be presented to the general public at public hearings and upon request by members of local government and community organizations.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40001, 40950, 41000, 41300, 41500, 41510, 41730 and 41731, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (b), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of subsections (b)–(b)(2) filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction adding HISTORY 7 and changes noted therein (Register 94, No. 48).
9. Certificate of Compliance as to 1–3–94 order, including amendment of subsections (a) and (b)–(b)(2), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18762. SRRE, HHWE, and NDFE Preparation.

(a) A jurisdiction shall prepare the SRRE, HHWE, and NDFE pursuant to Articles 6.1, 6.2, 6.3, and 6.4 of this Chapter, as applicable.

(1) Except as provided by Public Resources Code section 41735(a), a jurisdiction shall comply with the California Environmental Quality Act (CEQA) pursuant to Public Resources Code sections 21000 et seq.

(b) A jurisdiction shall submit written documentation to the Board of its designation of an agency responsible for preparation of the SRRE, HHWE and NDFE within 30 days of said designation.

(c) A jurisdiction, in coordination with the LTF, shall prepare and adopt the SRRE, HHWE, and NDFE, by the dates specified in Public Resources Code sections 41000, 41300 and 41791, as applicable.

(d) For the purposes of this article, after a jurisdiction prepares and adopts its NDFE, the NDFE shall be appended to the SRRE by the jurisdiction at the time the SRRE is submitted to the Board. At the time of the five year revision of the SRRE, the NDFE may be incorporated into the SRRE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 21083, 40900, 40950, 41000, 41003, 41300, 41303, 41500, 41510, 41730, 41731, 41732, 41733, 41734, 41735, 41736, 41750, 41780 and 41791, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending section heading and subsection (a)(1) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).
11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and subsections (a), (c) and (d), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).
12. Change without regulatory effect amending subsection (d) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).

§ 18763. Circulation of the Preliminary Draft SRRE and HHWE for Review.

(a) A jurisdiction shall prepare a preliminary draft of its SRRE and HHWE.

(b) If the jurisdiction is a city, the preliminary draft SRRE and HHWE shall be sent to adjoining cities, the county or regional agency responsible for the Countywide Integrated Waste Management Plan (CIWMP) or Regional Agency Integrated Waste Management Plan (RAIWMP) preparation, and the LTF.

(c) If the jurisdiction is a county, the preliminary draft SRRE and HHWE shall be sent to adjoining cities and the LTF.

(d) If the jurisdiction is a regional agency then the following applies:

(1) If the regional agency is composed of a single county but does not include all of the cities within the county, the preliminary draft SRRE and HHWE shall be sent to adjoining cities, the agency in the county responsible for the CIWMP preparation, and to the LTF.

(2) If the regional agency is composed of a single county and all of the cities within that county, the preliminary draft SRRE and HHWE shall be sent to adjoining cities and the LTF.

(3) If the regional agency is composed of two or more counties and all of the cities within the counties, the preliminary draft SRRE and HHWE shall be sent to adjoining cities, and the LTF of each affected county.

(4) If the regional agency is composed of two or more counties but does not include all of the cities within those counties, the preliminary draft SRRE and HHWE shall be sent to adjoining cities, each of the county agencies responsible for the CIWMP, and the LTF of each affected county.

Each jurisdiction shall also submit three copies of the draft SRRE and HHWE to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900, 41000, 41300, 41500, 41510, 41750.1 and 41790, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–19–91 order, including amendment of first paragraph, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18764. Review of the Preliminary Draft SRRE and HHWE.

(a) Review Period. In accordance with Government Code section 15376, the review period shall be a minimum of 30 days, commencing upon the date of receipt of the Preliminary Draft SRRE and HHWE by a reviewing agency. The median time for review shall be 38 days. The maximum time for review shall be 45 days.

(1) Review by LTF. In reviewing the preliminary draft SRRE and HHWE, the LTF shall consider the issues of regional concern pursuant to Public Resources Code section 40950(c) to aid in ensuring that they are addressed. Copies of written comments made by the LTF on the preliminary draft SRRE and HHWE shall be sent simultaneously to the Board and to the jurisdiction that prepared the preliminary draft SRRE and HHWE.

(2) Review by Other Reviewing Agencies. The county, adjacent cities, any association of regional governments, and the Board shall review the preliminary draft SRRE and HHWE and send written comments to the jurisdiction that prepared the preliminary draft SRRE and HHWE. A copy of the Board's written comments shall be sent simultaneously to the LTF.

NOTE: Authority cited: Section 40502, Public Resources Code; Section 15376, Government Code. Reference: Sections 40950, 41000, 41300, 41500, 41510 and 41790, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).
11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and subsection (a)(2), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18765. Review of the Final Draft SRRE, HHWE and NDFE.

(a) Thirty (30) days prior to the public hearing for the adoption of the SRRE and HHWE, the jurisdiction shall send a copy of the final draft of its SRRE and HHWE to the LTF(s) of the affected counties for review. Within 15 days of receipt of the final draft of the SRRE and HHWE, the LTF shall provide written comments to the jurisdiction and the Board regarding the final draft.

(b) Ninety (90) days prior to the public hearing for the adoption of the NDFE, the jurisdiction shall send a copy of the final draft NDFE to the LTF for review. Within 90 days of receipt of the final draft NDFE, the LTF shall provide written comments to the city or county and the Board regarding the final draft.

(c) If deficiencies are indicated in the LTF's comments, the LTF shall meet with the jurisdiction to resolve them. If no resolution between the jurisdiction and the LTF can be achieved, the LTF shall send a letter to the jurisdiction and the Board indicating the remaining deficiencies of the SRRE, HHWE and NDFE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40950, 40971, 41000, 41300, 41500, 41510, 41730, 41731 and 41734, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Certificate of Compliance as to 1–3–94 order, including amendment of subsection (b), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18766. Public Participation; Notice; Local Adoption of SRRE, HHWE and NDFE.

(a) The general public, affected governmental entities, and private industries shall be given an opportunity to participate in the planning process and implementation of the SRRE, HHWE, and NDFE through attendance at informative meetings and public hearings.

(1) Pursuant to Public Resources Code section 41793, at least one public hearing shall be held to receive testimony regarding the Preliminary Draft of the SRRE and HHWE before a jurisdiction adopts its SRRE and HHWE.

(A) To inform the public of the hearing, the jurisdiction shall publish a notice in a local newspaper of general circulation at least 30 days in advance of the scheduled public hearing on the SRRE and HHWE.

(2) Jurisdictions may form advisory committees which may review and comment on draft elements, and provide technical guidance and support during the development of the SRRE, HHWE, and NDFE.

(b) In addition to the hearing or hearings held pursuant to (a)(1) of this section, the governing body of the jurisdiction, shall conduct a public hearing for the purpose of adopting the SRRE, HHWE, and NDFE. After considering all comments of the members of the governing body and the public, the jurisdiction shall, by resolution, adopt the SRRE, HHWE and NDFE.

(1) To inform the public of the hearing, the jurisdiction shall publish a notice in a newspaper of general circulation at least three (3) days in advance of the scheduled public hearing on the final draft SRRE, HHWE, and NDFE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900, 40971, 41000, 41300, 41500, 41510, 41730, 41731 and 41793, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a)(1), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a)(2) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).
11. Editorial correction of subsection (b) (Register 95, No. 19).
12. Certificate of Compliance as to 1–3–94 order, including amendment of section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18766.5. Revision of the SRRE prior to Board Approval.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 15376, Government Code. Reference: Sections 40950, 41000, 41300, 41781.2, 41790 and 41793, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction adding section and HISTORY 1 (Register 94, No. 48).
3. Certificate of Compliance as to 1–3–94 order, including repealer of section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18767. Submittal of City or Regional Agency SRRE, HHWE, and NDFE to the County and County NDFE to the Cities.

(a) A city, or regional agency which is composed of some cities within a single county, shall transmit one (1) copy of its SRRE and one (1) copy of its HHWE to the county in which it is located within 30 days of its adoption by the city or regional agency for incorporation into the CIWMP.

(1) A signed resolution and documentation that the jurisdiction has complied with CEQA (Public Resources Code sections 21000 et seq.) shall accompany the SRRE and HHWE that are submitted to the county.

(b) A city, unless it is a city and county, or regional agency which is composed of some cities within a single county shall transmit a copy of its NDFE to the county in which it is located within 30 days of its adoption by the city or regional agency for incorporation into the CIWMP. This submittal shall occur no later than the applicable submittal dates in PRC section 41791.5.

(c) A county, unless it is a city and county, shall transmit a copy of its NDFE to the cities which are located within the county within 30 days of adoption of the NDFE by the county. This submittal shall occur no later than the applicable submittal dates specified in PRC 41791.5.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 21083, 40971, 41000, 41300, 41500, 41510, 41791, 41730, 41731, 41750.1 and 41793, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) and renumbering (a)(1) to (b) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).
11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18768. Submittal of the SRRE, HHWE, and NDFE to the Board.

(a) A jurisdiction shall, according to the schedule set forth in PRC section 41791.5, submit to the Board three (3) copies of its SRRE.

(1) When submitting the SRRE to the Board, the jurisdiction shall include a copy of the public notice(s) for the public hearings on the SRRE, a copy of the resolution(s) adopting the SRRE, comments on the final draft from the LTF, and a copy of the Notice of Determination which has been filed with the State Clearinghouse in the Office of Planning and Research as verification of compliance with the CEQA (Public Resources Code sections 21000 et seq.).

(b) A jurisdiction shall, according to the schedule set forth in PRC section 41791.5, submit to the Board three (3) copies of its NDFE.

(1) When submitting the NDFE to the Board, the jurisdiction shall include a copy of the public notice(s) for the public hearing(s) on the NDFE, a copy of the resolution(s) adopting the NDFE, and comments on the final draft from the LTF.

(c) A jurisdiction shall submit its HHWE with the CIWMP or the RAIWMP according to the schedule set forth in PRC section 41791. Any city, or regional agency which is composed of some cities within a single county, may separately submit its HHWE to the Board for approval.

(1) When submitting the HHWE to the Board, the jurisdiction shall include a copy of the public notice(s) for the public hearings on the HHWE,

a copy of the resolution(s) adopting its HHWE, comments on the final draft from the LTF, and a copy of the Notice of Determination which has been filed with the State's Clearinghouse in the Office of Planning and Research as verification of compliance with the CEQA (Public Resources Code sections 21000 et seq.).

(d) The Board's 120 day review period for consideration of approval of a SRRE, HHWE, or NDFE will commence upon determination by the Board that three (3) copies of a SRRE, HHWE, or NDFE and the accompanying documents required by (a), (b) and (c) of this section have been submitted by the jurisdiction.

(1) Within 30 days of receipt of a SRRE, HHWE, or NDFE for approval, the Board shall indicate to the jurisdiction whether all requirements included in (a), (b), and (c) have been fulfilled. If the Board notifies the jurisdiction that the required documents have not been submitted, the jurisdiction shall submit the remaining required document(s) within 30 days of notification.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 15376, Government Code. Reference: Sections 21083, 40971, 41750, 41791, 41791.5, 41794, 41800 and 41802, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendments of section and renumbering of subsections (b), (c) and (c)(1) to (a)(1), (2) and (3), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a)(2) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).
11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18769. Board Approval of SRREs, HHWEs, and NDFEs.

(a) The Board shall approve, conditionally approve, or disapprove the SRRE, HHWE, and NDFE at a public hearing. After receiving testimony from the jurisdiction, the public and the LTF, the Board shall either adopt and prepare written findings approving the SRRE, HHWE, and NDFE or issue a Notice identifying deficiencies in the SRRE, HHWE, and NDFE or amendments to the NDFE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41800, 41801, 41802 and 41810 through 41813, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18770. Amendment or Revision, and Resubmittal of the Amended or Revised SRRE, HHWE, and NDFE.

(a) If a jurisdiction revises or amends its SRRE, HHWE, or NDFE, the jurisdiction shall revise or amend and submit its SRRE, HHWE, or NDFE pursuant to the requirements of sections 18765 through 18768 of this article.

(b) A jurisdiction shall resubmit a revised or amended version of its SRRE, HHWE, or NDFE to the Board either voluntarily according to PRC section 41770.5 or within 120 days of receipt of a notice identifying the element's deficiencies.

(c) The Board's 60 day review period for consideration of approval of amendments to the NDFE prior to the five year revision of the SRRE will commence upon determination by the Board that three (3) copies of the amendments to the NDFE and the accompanying documents required by section 18768(b) have been submitted by the jurisdiction.

(1) Within 30 days of receipt of the amendments to the NDFE for approval, the Board shall indicate to the jurisdiction whether all requirements included in section 18768(b) have been fulfilled. If the Board notifies the jurisdiction that the required documents have not been submitted, the jurisdiction shall submit the remaining required document(s) within 30 days.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 21083, 40950, 41000, 41300, 41770, 41770.5, 41780, 41781.2, 41790, 41793, 41800, 41801, 41802, 41810–41813 and 41822, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (b) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
9. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction adding HISTORY 9 and changes noted therein (Register 94, No. 48).

11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading, section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18770.5. Board Approval of Revised or Amended SRREs, HHWEs, and NDFEs.

(a) If a jurisdiction is required to amend or revise its SRRE, HHWE, or NDFE due to the disapproval of the document, the Board shall approve, conditionally approve, or disapprove the element or amendment, pursuant to Public Resources Code sections 41812 and 41813, within 120 days of receipt of resubmitted elements or within 60 days of the receipt of NDFE amendments.

(b) The Board shall approve, conditionally approve, or disapprove revised or amended SRREs, HHWEs, and NDFEs at a public hearing. After considering public testimony and input from the LTF, the Board shall either adopt a resolution approving revised or amended SRREs, HHWEs, and NDFEs, or issue a notice identifying deficiencies in the SRREs, HHWEs, and NDFEs. Board approval shall be based on an evaluation of the jurisdiction's implementation of the hierarchy for waste management practices as described in Public Resources Code section 40051 of the California Integrated Waste Management Act of 1989.

(1) If revised or amended SRREs, HHWEs, and NDFEs are disapproved or conditionally approved, the Board shall send a notice identifying deficiencies within thirty (30) days of making its findings.

(2) Conditional approval or disapproval of a SRRE or HHWE, which has been revised per Section 18772 of this article, shall require the jurisdiction to reinstitute the process for preparation and approval of the SRREs and HHWEs, beginning in sections 18762 through 18768.

(3) If revised or amended SRREs, HHWEs, and NDFEs are approved, the Board shall send a copy of the resolution of approval to the jurisdiction within thirty (30) days of making its finding.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40050, 40051, 40052, 41780, 41800, 41802, 41810 through 41813 and 41822, Public Resources Code.

HISTORY

1. Certificate of Compliance as to 1–3–94 order, including renumbering and amendment of former section 18773 to 18770.5, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18771. Annual Report: Review and Revision of City, Regional Agency or County SRREs.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40050, 40051, 40052, 40950, 41000, 41300, 41780, 41790 and 41821, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (b) and (c), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsections (a)(1) and (b) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Amendment of subsection (b) filed 11–21–95 as an emergency; operative 11–21–95 (Register 95, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–20–96 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b) refiled 3–15–96 as an emergency; operative 3–20–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–18–96 or emergency language will be repealed by operation of law on the following day.
12. Repealer filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
13. Repealer refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18772. Board's Biennial Review of the City, Regional Agency, or County SRRE and HHWE.

(a) In addition to local jurisdiction review of city, regional agency, and county SRREs and HHWEs, at least once every two years, the Board shall conduct an independent review of SRREs and HHWEs. This biennial review will enable the Board to assess each jurisdiction's progress towards meeting the mandated diversion requirements. The Board shall determine if the SRRE and HHWE programs are being implemented, and if jurisdictions are meeting the goals of their SRRE and HHWE.

(b) If the Board finds that a jurisdiction is failing to implement its SRRE and HHWE, and is not making progress towards meeting the requirements of Public Resources Code sections 41000, 41300, 41500, 41510 or 41780, as applicable, after a public hearing on the matter, the Board shall issue a compliance order for achieving those requirements.

(1) The compliance order shall identify the programs goals of the SRRE and HHWE which are not being implemented or attained by the jurisdiction, or identify areas of the SRRE and HHWE which require revision. The Board shall also set a date by which the jurisdiction shall meet the mandated requirements.

(2) The Board shall issue the compliance order within 30 days of making its finding of noncompliance.

(c) If a jurisdiction fails to bring its SRRE and HHWE into compliance by the date specified by the Board, the Board shall enforce the compliance order pursuant to Public Resources Code section 41850.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41000, 41300, 41500, 41510, 41780, 41825 and 41850, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a) and (b), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Editorial correction of subsection (b) (Register 95, No. 19).

11. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and subsection (a), transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18773. Board Approval of Revised SRRE and HHWE.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40050, 40051, 40052, 41780, 41800, 41802, 41810 through 41813 and 41822, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and text filed 4–30–92; operative 4–30–92 pursuant to Government Code section 11346.2(d) (Register 92, No. 19).
8. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding HISTORY 8 and changes noted therein (Register 94, No. 48).
10. Certificate of Compliance as to 1–3–94 order, including renumbering and amendment of former section 18773 to 18770.5, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18774. One–Year Time Extension for Meeting Diversion Requirements.

(a) Commencing in 1995, the Board may grant a one–year time extension for meeting the state mandated requirements identified in Public Resources Code section 41780.

(1) A jurisdiction requesting an extension shall demonstrate, in writing, that it meets the requirements for an extension pursuant to Public Resources Code section 41820.

(2) Within 45 days of receipt of this request, the Board shall review the adequacy of the application, and determine if the requirements of Public Resources Code section 41820 are met. Based upon this determination, the Board shall adopt written findings approving or disapproving the jurisdiction's request.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780 and 41820, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction adding HISTORY 7 and changes noted therein (Register 94, No. 48).
9. Certificate of Compliance as to 1–3–94 order, including amendment of section heading and section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18774.5. Two–Year Time Extension for Meeting Diversion Requirements.

(a) Commencing in 1995, the Board may grant a two–year time extension to a rural jurisdiction, as defined in Public Resources Code sections 40183 and 40184, for meeting the state mandated diversion requirements in Public Resources Code section 41780.

(1) A jurisdiction requesting an extension shall demonstrate, in writing, that it meets the requirements for an extension pursuant to Public Resources Code section 41787.4.

(2) Within 45 days of receipt of a complete request, the Board shall review the adequacy of the application, and determine if the requirements of Public Resources Code section 41787.4 are met. Based upon this determination, the Board shall adopt written findings approving or disapproving the jurisdiction's request.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40183, 40184, 41780 and 41787.4, Public Resources Code.

HISTORY

1. New section filed 2–13–97; operative 3–15–97 (Register 97, No. 7).

§ 18775. Reduction in Diversion and Planning Requirements.

(a) A rural jurisdiction, as defined in Public Resources Code sections 40183 and 40184, may petition the Board, at a public hearing, to reduce the planning requirements and diversion requirements specified in Public Resources Code section 41780. To petition for a reduction, the jurisdiction shall present verification to the Board which indicates that achievement of the requirements is not feasible. To qualify to petition for a reduction in the diversion and planning requirements, a jurisdiction must meet the following:

(1) For a rural city, have a geographic area of less than 3 square miles or a population density of less than 1500 people per square mile and a waste disposal rate of less than 100 cubic yards per day or 60 tons per day.

(2) For the unincorporated area of a rural county, the county's population shall be 200,000 or less.

(3) For a rural regional agency, consist of rural cities and counties, not to exceed more than two rural counties, unless authorized by the Board.

(4) Be located in a rural area. "Rural area" means those counties and cities located in agricultural or mountainous areas of the state and located outside the Department of Finance's Primary Metropolitan Statistical Areas.

(b) Based on information presented at the hearing, the Board may establish reduced diversion requirements, and alternative, but less comprehensive, planning requirements. A petitioner may identify those specific planning requirements from which it wants to be relieved and provide justification for the reduction. Examples of reduced planning requirements could include, but would not be limited to, reduced requirements for solid waste generation studies, and reduced requirements and consolidation of specific component requirements. These reduced planning requirements, if granted, must ensure compliance with Public Resources Code section 41782.

(c) Rural jurisdictions requesting a reduction in the diversion and planning requirements must include the following information in the reduction petition:

(1) A general description of the existing disposal and diversion systems, including documentation of the types and quantities of waste disposed and diverted. Documentation sources may include, but are not limited to, the following:

(A) Solid Waste Generation or Characterization Studies;

(B) Diversion data from public and private recycling operations;

(C) Current year waste loading information from permitted solid waste facilities used by the jurisdiction;

(2) Identification of the specific reductions being requested (i.e., diversion or planning requirements or both);

(3) Documentation of why attainment of mandated diversion and planning requirements is not feasible. Examples of documentation could include, but are not limited to:

(A) Evidence from the documentation sources specified in paragraph (c)(1) of this section;

(B) Verification of existing solid waste budget revenues and expenses from the duly authorized designated representative of the jurisdiction;

(4) The planning or diversion requirements that the jurisdiction feels are achievable, and why.

(5) Documentation verifying that the rural city or county has implemented those programs identified in Public Resources Code section 41787(a)(3).

(6) Documentation verifying that the rural regional agency has implemented those regionwide programs identified in Public Resources Code section 41787.1(c)(2).

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40183, 40184, 40973, 41787, 41787.1, 41787.2 and 41802, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. New section filed 6–17–91 as an emergency; operative 6–17–91 (Register 91, No. 35). A Certificate of Compliance must be transmitted to OAL by 10–15–91 or emergency language will be repealed by operation of law on the following day.
7. Change without regulatory effect repealing section filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. New section filed 7–29–91 as an emergency; operative 7–29–91 (Register 92, No. 17). A Certificate of Compliance must be transmitted to OAL 11–26–91 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–29–91 order including amendment of section transmitted to OAL 3–24–92 and filed 5–4–92 (Register 92, No. 18).
10. Amendment of section heading, text and NOTE filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction adding HISTORY 5 and changes noted therein (Register 94, No. 48).
12. Editorial correction restoring HISTORY NOTES 1–5 and renumbering remaining HISTORY NOTES (Register 95, No. 19).
13. Amendment of subsection (d), new subsection (e) and subsection relettering filed 11–21–95 as an emergency; operative 11–21–95 (Register 95, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–20–96 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsection (d), new subsection (e) and subsection relettering refiled 3–15–96 as an emergency; operative 3–20–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–18–96 or emergency language will be repealed by operation of law on the following day.
15. Repealer of subsections (d)–(g) filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
16. Repealer of subsections (d)–(g) refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 9–25–96 order, including amendment of NOTE, transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
18. Certificate of Compliance as to 1–3–94 order, including amendment of section and NOTE, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).
19. Change without regulatory effect amending subsections (a)(1)–(2) and (a)(4) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).

§ 18775.2. Sludge Diversion.

(a) Jurisdictions that wish to claim diversion of the waste type "sludge" shall submit a written request to the Board pursuant to PRC 41781.1. Within 45 days of receipt of a jurisdiction's request, the Board shall notify the jurisdiction in writing whether sufficient information has been included in the request to enable the Board to make findings pursuant to PRC Section 41781.1. Requests that are found by the Board to be incomplete, pursuant to the criterion set forth in this section, shall be returned to the jurisdiction to correct any inadequacy. The Board shall make the findings required by PRC Section 41781.1 at a public hearing no later than 180 days after receipt of a complete request for sludge diversion credit.

(1) A request for allowing sludge diversion shall include the following information:

(A) Description of the selected diversion alternative(s);

(B) Projected annual quantity of sludge waste to be diverted through the year 2000;

(C) Documentation that waste type "sludge" has been categorized, quantified, and documented in the applicable "solid waste generation study" as defined in section 18722 of this chapter;

(D) Written certification from the agent(s) responsible for implementing the sludge diversion alternative that the intended sludge reuse meets all applicable requirements of state and federal law. Information upon which the above certification is based shall be made available to the Board upon request.

(E) Description of monitoring program(s) that are in place or which will be established to insure that the sludge diversion alternative will not pose a threat to public health or the environment.

(F) If the sludge diversion alternative receives a permit or is identified under an existing permit, waste discharge requirements, or has other conditions imposed by one or more of the agencies specified in PRC Section 41787.1, include the name of the agency(s) and identify the agency identification code or number for the permit, waste discharge requirements, or other imposed conditions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780 and 41781.1, Public Resources Code.

HISTORY

1. New section filed 1–3–94 as an emergency; operative 1–3–94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1–3–97 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction adding section and HISTORY 1 (Register 94, No. 48).
3. Certificate of Compliance as to 1–3–94 order, including amendment of section, transmitted to OAL 12–31–96 and filed 2–13–97 (Register 97, No. 7).

§ 18775.4. Use of Excluded Waste Types for Baseline Diversion Credit.

(a) To establish baseline diversion, jurisdictions which have included alternatives for the diversion of agricultural wastes, inert solids, or scrap metals as defined in PRC section 41781.2(b), or white goods as defined in Article 3 of this Chapter, shall follow the requirements specified in PRC section 41781.2. Within 60 days of receipt of a jurisdiction's SRRE for final review, the Board shall notify the jurisdiction in writing if there is insufficient information to determine that the criteria specified in PRC section 41781.2 have been met. This notification shall be based on the criteria specified in PRC section 41801.5(b).

(b) If the Board disapproves an element for which a jurisdiction has received a notification of excluded wastes pursuant to PRC section 41801.5(b), the jurisdiction may, concurrent with the procedures specified in section 18770 of this article, submit additional information to the Board which substantiates that the criteria specified in PRC section 41781.2 have been met. Within 60 days of receipt of the additional information, the Board shall determine whether diversion of all or a portion of the excluded waste will be allowed for the purposes of compliance with the diversion requirements of PRC section 41780.

(c) Based on the Board's determination in subsection (b), the jurisdiction shall update or revise, if necessary, its SRRE to correct any inadequacy and shall resubmit it to the Board within 120 days of the Board's determination. If a jurisdiction is unable to resubmit its updated or re-

vised SRRE within 120 days, the Board may, on a case-by-case basis, extend the deadline for resubmittal. Upon receipt of a resubmitted element, the Board shall follow the procedures specified in section 18770 of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780, 41781.2, 41801.5 and 41811.5, Public Resources Code.

HISTORY

1. New section filed 1-3-94 as an emergency; operative 1-3-94 (Register 94, No. 48). A Certificate of Compliance must be transmitted to OAL by 1-3-97 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction adding section and HISTORY 1 (Register 94, No. 48).
3. Certificate of Compliance as to 1-3-94 order, including amendment of subsections (b) and (c), transmitted to OAL 12-31-96 and filed 2-13-97 (Register 97, No. 7).

Article 8. Procedures for Preparing and Revising Siting Elements, Summary Plans, and Countywide and Regional Agency Integrated Waste Management Plans

§ 18776. Procedures for the Preparation and Submittal of the Siting Element and Summary Plan.

(a) Except as provided in subsection (b)(3)(B) of this section, each county shall prepare and adopt a Siting Element and a Summary Plan which shall be part of the Countywide Integrated Waste Management Plan (CIWMP), pursuant to Public Resources Code sections 41700 through 41826.

(b) Where a regional agency has been formed, the following requirements shall apply:

(1) Each regional agency composed of member agencies that do not extend beyond the boundaries of a single county and does include the unincorporated area of the county, shall prepare and submit to the Board a Siting Element and a Summary Plan which shall be part of the CIWMP.

(2) Each regional agency composed of member agencies that do not extend beyond the boundaries of a single county, but does not include the unincorporated area of the county, shall be included in the documents prepared pursuant to subsection (a) of this section for the preparation and submittal of the Siting Element and Summary Plan.

(3) Each regional agency composed of two or more counties and all cities within those counties, shall prepare and submit to the Board one of the following as part of the Regional Agency Integrated Waste Management Plan (RAIWMP):

(A) a countywide Siting Element and Summary Plan for each county within the regional agency; or

(B) a regionwide Siting Element and Summary Plan for the regional agency.

(4) Each regional agency composed of more than one county, but which does not include all of the cities within those counties, shall be included in the documents prepared pursuant to subsection (a) of this section for the preparation and submittal of the Siting Element and Summary Plan for each county of the regional agency.

(5) Each regional agency composed of more than one county, and which includes all of the cities and the unincorporated area within at least one of those counties, but not all of the cities within the other county(ies), shall prepare and submit to the Board a Siting Element and Summary Plan as part of the RAIWMP for each county that is wholly encompassed in the regional agency.

(c) Each county and regional agency shall designate the agency responsible for preparing its Siting Element and Summary Plan; and shall notify the Board, in writing, within 30 days of the effective date of this article or the formation of a regional agency. Each county and regional agency shall notify the Board, in writing, of any change in the designation of a responsible agency within 30 days of the change.

(d) For the purposes of this article, "countywide" shall be defined as including the incorporated cities within the county and the unincorporated areas of the county. For purposes of this article, "county" shall include the Board of Supervisors as the legislative and executive body of county government, and any designated agency responsible for solid waste management.

(e) For the purposes of this article, "regionwide" shall be defined as including the member agencies of a regional agency. For the purposes of this article, "regional agency" shall be the governing entity created by a voluntary agreement between cities and/or counties to carry out the mandates of Public Resources Code section 41780. A city or county which is a party to such an agreement shall be considered a "member agency" of the regional agency. A regional agency may authorize one district, as defined in subdivision (a) of Section 41821.2 of the Public Resources Code, to be included as a member of the regional agency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 40970 - 40975, 40977, 41700, 41701, 41702, 41703, 41704, 41750, 41750.1, 41751, 41791 and 41821.2, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7-6-90 emergency regulations approved by OAL 11-6-90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2-15-91 as an emergency; operative 2-15-91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-17-91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-15-91 order, including amendment of subsections (b) and (c), transmitted to OAL 4-29-91 and filed 5-29-91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (c) filed 7-11-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of article heading, section heading and subsection (a), repealer of subsection (b) and new subsections (b)-(b)(5), amendment of subsection (c), repealer of subsection (d) and new subsections (d)-(e) and amendment of NOTE filed 7-22-94; operative 8-22-94 (Register 94, No. 29).
9. Change without regulatory effect amending subsection (e) and amending NOTE filed 6-26-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

§ 18777. Role of the Lock Task Force.

(a) The role of the Local Task Force (LTF) shall be to assist and advise the agency(ies) responsible for preparation of the Siting Element and the Summary Plan. The LTF shall guide the preparation and review of these documents prior to their circulation to reviewing agencies and to the Board, to aid in ensuring that the county or regional agency adequately plans for meeting future solid waste handling and disposal needs.

(b) Within 30 days of its establishment, the LTF shall determine and verify the remaining permitted combined disposal capacity of existing solid waste disposal facilities in the county or regional agency.

(c) If the county and the cities within the county determine that the representation of the current LTF is not adequately addressing the needs of the county, cities, or public, a new LTF may be established. The new LTF membership shall be approved as described in Public Resources Code Section 40950. Within 30 days of the establishment of the new LTF, a membership roster containing the names, phone numbers, and member representation shall be sent to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40001, 40950, 41751 and 41791, Public Resources Code.

HISTORY

1. New section filed 3-19-90 as an emergency; operative 3-19-90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-17-90.
2. New section refiled 7-6-90 as an emergency; operative 7-17-90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11-14-90 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and subsections (a)–(b), repealer of subsections (b)(1)–(2), new subsection (c) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18778. Public Participation in the Preparation of the Preliminary Draft Siting Element and Summary Plan.

(a) The general public, affected governmental entities, and private industries shall be given an opportunity to comment on the development and implementation of the preliminary Siting Element and Summary Plan at informative meetings and public hearings.

(1) The agency(ies) responsible for preparing the preliminary Siting Element and Summary Plan shall hold at least one public meeting to receive public comment on these preliminary draft documents. Notice of the public meeting shall be provided pursuant to section 18782 of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900 and 41793, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a)(1) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading, text and NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18779. Procedures for the Preparation and Review of the Preliminary Draft Siting Element and Summary Plan.

(a) Preparation of the Preliminary Draft Siting Element and Summary Plan. Each county and regional agency shall prepare a preliminary draft of its Siting Element and Summary Plan. The agency(ies) responsible for preparation of the preliminary draft(s) shall consider LTF recommendations and public input during the development and revision phases. The preliminary draft(s) shall be sent to the LTF, incorporated cities within the county, member agencies within the regional agency, and the Board.

(b) Review by LTF. The preliminary draft Siting Element and Summary Plan shall be reviewed by the LTF. Within 45 days of receipt of each preliminary draft, the LTF shall send written comments to the Board and to the agency preparing each preliminary draft document.

(c) Review by Incorporated Cities. Within 45 days of receipt of the preliminary draft Siting Element and Summary Plan, each incorporated city within the county and regional agency, shall review each preliminary draft and send written comments to the agency responsible for preparing each preliminary draft document.

(d) Review by Member Agencies. Within 45 days of receipt of the preliminary draft Siting Element and Summary Plan, each member agency within the regional agency, shall review each preliminary draft and send written comments to the agency responsible for preparing each preliminary draft document.

(e) Review by the Board. Three hardcopies of the the preliminary draft Siting Element and Summary Plan or two hardcopies and two magnetically coded disks in a Board approved format shall be submitted to the Board. Within 45 days of receipt of the required copies of the the preliminary draft Siting Element and Summary Plan, the Board shall send written comments on the adequacy of each preliminary draft to meet the requirements of the Integrated Waste Management Act of 1989, as amended, to the agency responsible for preparing each draft document. A copy of the Board's preliminary draft Siting Element and Summary Plan comments shall be simultaneously sent to the LTF.

(f) Other Agencies. A copy of the the preliminary draft Siting Element and Summary Plan shall be submitted to all associations of governments and to any Local Enforcement Agency located within the boundaries of the county or regional agency. Within 45 days of receipt of the the preliminary draft Siting Element and Summary Plan, each of those agencies receiving a copy may send written comments to the agency responsible for preparing the preliminary draft document.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900, 40950, 41700, 41701, 41703, 41704, 41710, 41750, 41751 and 41791, Public Resources Code.

[The next page is 806.127.]

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a), (b) and (c), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and subsections (a)–(c), new subsections (d)–(f) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18780. Procedures for the Preparation of the Final Draft Siting Element and Summary Plan.

No later than 105 days after the close of the 45 day review period for the preliminary draft Siting Element and Summary Plan, the agency responsible for preparing each draft document shall respond in writing to each comment received on each preliminary draft, and prepare the final draft Siting Element and Summary Plan.

(a) A copy of the final draft countywide Siting Element and Summary Plan, including a copy of the written responses to comments received, shall be sent to the LTF, each incorporated city in the county, each Local Enforcement Agency (LEA) in the county, applicable associations of governments, and any regional agencies in the county.

(b) A copy of the final draft regionwide Siting Element and Summary Plan, including a copy of the written responses to comments received, shall be sent to each member agency of the regional agency formed pursuant to section 18776(b)(3) of this chapter, each LTF and LEA in the regional agency, and applicable associations of governments.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40900, 40950, 41700, 41701, 41703, 41704, 41710, 41750 and 41751, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and first paragraph, new subsections (a)–(b) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18781. Local Task Force Review Process.

(a) Within 45 days of receipt of the final draft Siting Element and Summary Plan, the LTF shall provide written comments to the following:

(1) the county or regional agency responsible for the preparation of the final draft Siting Element and Summary Plan;

(2) each incorporated city within the county or each member agency within the regional agency;

(3) each regional agency within the county; and

(4) the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40950 and 41751, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a) and (b), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading, repealer of subsections (a)–(c), new subsections (a)–(a)(4) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18782. Notice Requirements for Public Hearings.

(a) At least 30 days in advance of the scheduled public hearing to take comments on the preliminary draft Siting Element and Summary Plan as specified in CCR section 18778 of this article, the county shall publish a notice of the public hearing in a local newspaper of general circulation.

(b) At least 30 days in advance of the scheduled public hearing for the purposes of adopting the final draft Siting Element and Summary Plan, as specified in CCR section 18783 of this article, each incorporated city within the county and the county or designee shall publish a notice of the public hearing in a local newspaper of general circulation.

(c) At least 30 days in advance of the scheduled public hearing to take comments on the preliminary draft Siting Element and Summary Plan, as specified in CCR section 18778 of this article, the regional agency formed pursuant to section 18776(b)(3) of this article shall publish a notice of the public hearing in a local newspaper of general circulation.

(d) At least 30 days in advance of the scheduled public hearing for the purpose of adopting the final draft Siting Element and Summary Plan, as specified in CCR section 18783 of this article, each member agency within the regional agency and the regional agency shall publish a notice of the public hearing in a local newspaper of general circulation.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41793, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 2–15–91 order, including amendment of first paragraph, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading, designation and amendment of subsection (a), new subsections (b)–(c) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18783. Local Adoption of the Final Draft Siting Element and Summary Plan, and the Countywide and Regional Agency Integrated Waste Management Plans.

(a) Local adoption of the CIWMP will occur when the final draft Siting Element and Summary Plan are adopted by the county and the cities within the county as described in Public Resources Code section 41721 and 41760. A final draft Siting Element and Summary Plan submitted for local adoption shall be accompanied by environmental documentation verifying compliance with the California Environmental Quality Act (CEQA), pursuant to Public Resources Code sections 21000 et seq.

(1) Each incorporated city in the county, and the county, shall conduct a public hearing for the purpose of adopting the final draft Siting Element and Summary Plan. After considering all public comments, the county and each city within the county shall, by resolution, either approve or disapprove the final draft Siting Element and Summary Plan. Failure by a city to take action on the Siting Element or Summary Plan shall be deemed an approval of the Siting Plan or Summary Plan by that city.

(2) If the final draft Siting Element and Summary Plan are not approved by the county and the cities within the county, pursuant to PRC sections 41721 and 41760, then the county shall revise the deficient areas within 90 days of the close of the local jurisdiction review period specified in PRC section 41721 and recirculate them for local approval, pursuant to sections 18780 through 18785 of this article. These revised documents shall be approved as described in Public Resources Code sections 41721 and 41760.

(b) Local adoption of the RAIWMP for a regional agency preparing documents pursuant to section 18776(b)(3)(A) and (5) of this article will occur when the final draft Siting Element and Summary Plan from each county that makes up the regional agency have been adopted by the county and cities within the county. These revised documents shall be approved as described in Public Resources Code sections 41721 and 41760. A final draft Siting Element and Summary Plan shall be accompanied by environmental documentation verifying compliance with CEQA, pursuant to Public Resources Code sections 21000 et seq.

(1) Each incorporated city in the county, and each county, shall conduct a public hearing for the purpose of adopting the final draft Siting Element and Summary Plan. After considering all public comments, each county and each city within the county shall, by resolution, either approve or disapprove the final draft Siting Element and Summary Plan.

(2) If the final draft Siting Element and Summary Plan are not approved by each county and the cities within each county as described in Public Resources Code sections 41721 and 41760, then the county responsible for preparing the final draft Siting Element and Summary Plan shall revise the deficient areas within 90 days of the close of the local jurisdiction review period specified in PRC section 41721 and recirculate them for local approval, pursuant to sections 18780 through 18785 of this article.

(c) Local adoption of the RAIWMP for a regional agency preparing documents pursuant to section 18776(b)(3)(B) of this article will occur when the final draft Siting Element and Summary Plan have been approved by the regional agency and by a majority of the member agencies within the regional agency except in those regional agencies which have only two member agencies, in which case the Siting Element and Summary Plan are subject to approval of the member agency which contains a majority of the population of the member agencies of the county. Each member agency shall act upon the Siting Element and the Summary Plan within 90 days after receipt of the documents. If a member agency fails to act upon the Siting Element and Summary Plan within 90 days after receipt of the element and plan, the member agency shall be deemed to have approved the Siting Element and Summary Plan as submitted. A final draft Siting Element and Summary Plan submitted for local adoption shall be accompanied by environmental documentation verifying compliance with CEQA, pursuant to Public Resources Code sections 21000 et seq.

(1) Each member agency, and the regional agency, shall conduct a public hearing for the purpose of adopting the final draft Siting Element and Summary Plan. After considering all public comments, the regional agency and each member agency within the regional agency shall, by resolution, either approve or disapprove the final draft Siting Element and Summary Plan.

(2) If the final draft Siting Element and Summary Plan are not approved as provided in subsection (c) of this section, then the regional agency responsible for preparing the final draft Siting Element and Summary Plan shall revise the deficient areas within 90 days of the close of the local jurisdiction review period specified in PRC section 41721 and recirculate them for local approval, pursuant to sections 18780 through 18785 of this article. These revised documents shall be approved as described in subsection (c) above.

(d) Local approval of the RAIWMP for a regional agency formed pursuant to section 18776(b)(4) of this article will occur when the final draft Siting Element and Summary Plan for each county where the regional agency exists have been adopted by the cities and each county. The final draft Siting Element and Summary Plan shall be approved as described in Public Resources Code sections 41721 and 41760. A final draft Siting Element and Summary Plan submitted for local adoption shall be accompanied by environmental documentation verifying compliance with CEQA, pursuant to Public Resources Code sections 21000 et seq.

(1) Each incorporated city in each county, and each county, shall conduct a public hearing for the purpose of adopting the final draft Siting Element and Summary Plan. After considering all public comments, each county and city within each county shall, by resolution, either approve or disapprove the final draft Siting Element and Summary Plan.

(2) If the final draft Siting Element and Summary Plan are not approved by each county and cities within each county, then each county shall revise the deficient areas within 90 days of the close of the local jurisdiction review period specified in PRC section 41721 of this article and recirculate them for local approval, pursuant to sections 18780 through 18785 of this article. These documents shall be approved as described in Public Resources Code section 41721 and 41760. These revised documents shall be approved as described in this subsection (d) above.

(e) If a jurisdiction or member agency disapproves the Siting Element or the Summary Plan, the jurisdiction or member agency shall give written notification to the LTF, the County Board of Supervisors and the Board of the deficient areas in the Siting Element or the Summary Plan within 30 days of disapproval.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40950, 40971, 41000, 41720, 41721, 41751 and 41760, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a), (b) and (c), transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).

7. Change without regulatory effect amending subsection (c) and reference cites filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 37).
8. Amendment of section heading and subsection (a), new subsections (a)(1)–(2), repealer of subsections (b)–(b)(1) and new subsections (b)–(b)(2), repealer and new subsection (c), redesignation and amendment of subsection (c)(1) to subsection (e), new subsections (c)(1)–(d)(2) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18784. Submittal of Countywide and Regional Agency Integrated Waste Management Plan to the Board for Approval.

(a) Within 30 days of the local adoption of the CIWMP, as provided in section 18783 of this article, the county shall submit, unless any of these documents have been submitted pursuant to the requirements of this chapter, three hardcopies, or two hardcopies and two magnetically coded disks in a format approved by Board staff, of the following to the Board:

(1) for a county with no regional agency within its boundaries, a CIWMP consisting of the Source Reduction and Recycling Elements (SRRE's), Household Hazardous Waste Elements (HHWE's), and Nondisposal Facility Elements (NDFE's) for the county and each city within the county, and the Siting Element and Summary Plan.

(2) for a county which contains one or more regional agencies the CIWMP shall include:

(A) a SRRE, HHWE, and NDFE for each city that is not a member agency of the regional agency and for the county if it is not a member agency of the regional agency;

(B) a SRRE, HHWE, and NDFE for each city that is a member agency of the regional agency and for the county if it is a member agency of the regional agency, or the SRRE, HHWE, and NDFE for the regional agency, if the regional agency has elected to prepare one or more of these documents as a regional agency;

(C) a countywide Siting Element and Summary Plan.

(3) a copy of the agreement forming a regional agency pursuant to Public Resources Code section 40975;

(4) a copy of each jurisdiction's resolution adopting its SRRE, HHWE, and NDFE, and approving or disapproving the Siting Element and Summary Plan;

(5) a copy of the public notices for each jurisdiction's public hearings on the SRRE, HHWE, NDFE, Siting Element and Summary Plan;

(6) a copy of the Notice of Determination, for the project's CEQA document(s), which has been filed with the State Clearinghouse in the Office of Planning and Research;

(7) a tabulation showing that the Siting Element and Summary Plan were approved by the county and the cities within the county in accordance with sections 41721 and 41760 of the Public Resources Code.

(b) Within 30 days of the local adoption of the RAIWMP, as provided in section 18783 of this article, the regional agency shall submit, unless these documents have already been submitted pursuant to the requirements of this chapter, three hardcopies, or two hardcopies and two magnetically coded disks in a format approved by Board staff, of the following to the Board:

(1) for a regional agency composed of two or more counties and all of the cities within those counties, the RAIWMP shall include either:

(A) a SRRE, HHWE, and NDFE for each city and county which are member agencies of the regional agency and the Siting Element and Summary Plan for each county; or

(B) a SRRE, HHWE, NDFE, Siting Element, and Summary Plan for the regional agency.

(2) for a regional agency composed of more than one county, but which does not encompass all of the cities within those counties, a RAIWMP consisting of a SRRE and HHWE, and a NDFE for the regional agency;

(3) for a regional agency composed of more than one county, and which includes all of the cities and the unincorporated area within at least one of those counties, but not all of the cities within the other county(ies), the RAIWMP shall include a SRRE and HHWE for the regional agency, a NDFE for each city and the county that is a member agency of the regional agency, and a Siting Element and Summary Plan for each county that is wholly encompassed by the regional agency.

(4) a copy of the agreement forming a regional agency pursuant to Public Resources Code section 40975;

(5) a copy of each jurisdiction's resolution adopting its SRRE, HHWE, and approving or disapproving the Siting Element and Summary Plan;

(6) a copy of the public notices for each jurisdiction's public hearing on the applicable preliminary draft and final draft SRRE, HHWE, and Siting Element and Summary Plan;

(7) a copy of the Notice of Determination, for the project's CEQA document(s), which has been filed with the State Clearinghouse in the Office of Planning and Research;

(8) a tabulation showing that the Siting Element and Summary Plan were approved by the county and the cities within the county in accordance with sections 41721 and 47160 of the Public Resources Code or by each member agency of a regional agency in accordance with section 18783(c) of this article.

(c) The Board's 120 day review period for consideration of approval of the Siting Element and the Summary Plan will commence upon determination by the Board that the accompanying documents required in section 18784 of this article have been submitted and are included or referenced by the submitting jurisdiction.

(1) Within 30 days of receipt of the Siting Element and the Summary Plan submitted for approval, the Board shall indicate to the submitting jurisdiction whether all requirements in section 18784 of this article have been fulfilled. If the jurisdiction is notified that the required documents have not been submitted, the jurisdiction shall submit the remaining document(s) within 30 days of notification.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40975, 41720, 41721, 41760, 41790, 41791 and 41793, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsections (a)(1), (a)(2), (a)(3), (a)(5) and section heading transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect amending subsection (a) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and subsection (a), repealer of subsection (a)(1) and new subsections (a)(1)–(3), redesignation and amendment of subsections (a)(2)–(5) to subsections (a)(4)–(7), new subsections (b)–(c)(1) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18785. Board Approval of Countywide and Regional Agency Integrated Waste Management Plan.

(a) Following submittal of a locally adopted CIWMP or RAIWMP to the Board, the Board shall have at least 90 days, but not more than 120 days, with a median of 105 days, to review and act upon the CIWMP or RAIWMP. The Board, at a public hearing, shall determine whether the CIWMP or RAIWMP meets the requirements of the California Integrated Waste Management Act of 1989 as amended. After considering public testimony, input from the LTF, and written comments, the Board shall approve, conditionally approve, or disapprove the CIWMP or RAIWMP. The Board shall either adopt a resolution approving or condi-

tionally approving the CIWMP or RAIWMP, or issue a Notice identifying deficiencies in the CIWMP or RAIWMP.

(b) Within 30 days of approval, conditional approval, or disapproval of a CIWMP or RAIWP, the Board will send a copy of the resolution of approval or conditional approval, or a Notice identifying the deficiencies to the jurisdiction(s) responsible for preparation of the CIWMP or RAIWMP and any Element containing deficiencies.

(1) In a Notice of Deficiency, the Board shall identify the deficient areas in a CIWMP or RAIWMP and provide a written analysis of why these areas are deficient and provide recommendations to correct deficient areas.

NOTE: Authority cited: Section 40502, Public Resources Code; and Section 15736, Government Code. Reference: Sections 41790, 41800, 41801 and 41810, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a), new subsection (b)(1) and new section heading, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading, text and NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18786. Resubmittal of Countywide and Regional Agency Integrated Waste Management Plans or Designated Sections of Countywide and Regional Agency Integrated Waste Management Plans After a Finding of Deficiency.

A county or regional agency shall modify and resubmit the modified sections of the CIWMP or RAIWMP which were identified in the Notice of Deficiency, in accordance with the requirements of Public Resources Code sections 41811, 41811.5, and 41812 and with sections 18780 through 18784 of this article. If a county or regional agency is unable to submit a modified CIWMP or RAIWMP within 120 days of receipt of the Notice of Deficiency, then within 45 days of receipt of the Notice of Deficiency, a county or regional agency shall submit a modification schedule and an explanation of the need for extension to the Board.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41790, 41810, 41811, 41812 and 41813, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of section heading, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading, text and NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18787. Annual Review of Progress Towards Solid Waste Disposal Goals.

NOTE: Authority: Section 40502, Public Resources Code. Reference: Sections 40051, 40052, 41701, 41750, 41751, 41760 and 41821, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of subsection (a) and section heading, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Change without regulatory effect repealing subsection (a)(1)(H) and amending (a)(3) filed 7–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).
8. Amendment of section heading and subsection (a), repealer of subsections (a)(1)–(a)(1)(G) and new subsections (a)(1)–(7), redesignation and amendment of subsections (a)(2)–(3) to subsection (b), repealer of subsection (a)(4) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).
9. Amendment of subsection (a) filed 11–21–95 as an emergency; operative 11–21–95 (Register 95, No. 47). A Certificate of Compliance must be transmitted to OAL by 3–20–96 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (a) refiled 3–15–96 as an emergency; operative 3–20–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–18–96 or emergency language will be repealed by operation of law on the following day.
11. Repealer filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
12. Repealer refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18788. Five–Year Review and Revision of the Countywide or Regional Agency Integrated Waste Management Plan.

(a) CIWMP or RAIWMP Review. Prior to the fifth anniversary of Board approval of a CIWMP or RAIWMP, or its most recent revision, the LTF shall complete a review of the CIWMP or RAIWMP in accordance with Public Resources Code sections 40051, 40052, and 41822, to assure that the county's and regional agency's waste management practices remains consistent with the hierarchy of waste management practices defined in Public Resources Code, section 40051.

(1) Prior to the fifth anniversary of Board approval of the CIWMP or RAIWMP, the LTF shall submit written comments on areas of the CIWMP or RAIWMP which require revision, if any, to the county or regional agency and the Board.

(2) Within 45 days of receiving LTF comments, the county or regional agency shall determine if a revision is necessary, and notify the LTF and the Board of its findings in a CIWMP or RAIWMP Review Report.

(3) When preparing the CIWMP or RAIWMP Review Report the county or regional agency shall address at least the following:

(A) changes in demographics in the county or regional agency;

(B) changes in quantities of waste within the county or regional agency;

(C) changes in funding sources for administration of the Siting Element and Summary Plan;

(D) changes in administrative responsibilities;

(E) programs that were scheduled to be implemented but were not, a statement as to why they were not implemented, the progress of programs that were implemented, a statement as to whether programs are meeting their goals, and if not what contingency measures are being enacted to ensure compliance with Public Resources Code section 41751;

(F) changes in permitted disposal capacity, and quantities of waste disposed of in the county or regional agency;

(G) changes in available markets for recyclable materials; and

(H) changes in the implementation schedule.

(4) Within 90 days of receipt of the CIWMP or RAIWMP Review Report, the Board shall review the county's or regional agency's findings, and at a public hearing, approve or disapprove the county's or regional agency's findings. Within 30 days of its action, the Board shall send a copy of its resolution, approving or disapproving the county's or regional agency's findings, to the LTF and the county or regional agency. If the Board has identified additional areas that require revision, the Board shall identify those areas in its resolution.

(b) CIWMP or RAIWMP Revision. If a revision is necessary the county or regional agency shall submit a CIWMP or RAIWMP revision schedule to the Board.

(1) The county or regional agency shall revise the CIWMP or RAIWMP in the areas noted as deficient in the CIWMP or RAIWMP Review Report and/or as identified by the Board.

(2) The county or regional agency shall revise and resubmit its CIWMP or RAIWMP pursuant to the requirements of sections 18780 through 18784 of this article.

(c) The county shall submit all revisions of its CIWMP to the Board for approval. The revised CIWMP shall be reviewed pursuant to the requirements of sections 18784 through 18786 of this article.

(d) The regional agency shall submit all revisions of its RAIWMP to the Board for approval. The revised RAIWMP shall be reviewed pursuant to the requirements of sections 18784 through 18786 of this article.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 40052, 41750, 41760, 41770, and 41822, Public Resources Code.

HISTORY

1. New section filed 3–19–90 as an emergency; operative 3–19–90 (Register 90, No. 14). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7–17–90.
2. New section refiled 7–6–90 as an emergency; operative 7–17–90 (Register 90, No. 37). A Certificate of Compliance must be transmitted to OAL by 11–14–90 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of Certificate of Compliance due date in HISTORY 2 (Register 91, No. 13).
4. Request for readoption of 7–6–90 emergency regulations approved by OAL 11–6–90 but never filed with Secretary of State. Section repealed by operation of Government Code section 11346.1(e) (Register 91, No. 13).
5. New section refiled 2–15–91 as an emergency; operative 2–15–91 (Register 91, No. 13). A Certificate of Compliance must be transmitted to OAL by 6–17–91 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–15–91 order, including amendment of section, renumbering of prior subsection (b) to subsection (a)(3), new subsection (b) and amendment of section heading, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37).
7. Amendment of section heading and subsections (a)–(a)(3)(G), new subsection (a)(3)(H), amendment of subsections (a)(4)–(b)(2), new subsections (c)–(d) and amendment of NOTE filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18789. Board Approval of the Plan Revision.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code; and Section 15376, Government Code. Reference: Sections 41790, 41800, 41801, 41810 and 41822, Public Resources Code.

HISTORY

1. Certificate of Compliance as to 2–19–91 order, including repeal of prior section 18789 and amendment and renumbering of prior section 18790 to section 18789, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37). For prior history, see Register 91, No. 13.
2. Repealer filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18790. Resubmittal of a Deficient Plan Revision.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41790, 41810, 41811, 41812 and 41813, Public Resources Code.

HISTORY

1. Certificate of Compliance as to 2–15–91 order, including amendment and renumbering of prior section 18791 to section 18790, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37). For prior history, see Register 91, No. 13.
2. Repealer filed 7–22–94; operative 8–22–94 (Register 94, No. 29).

§ 18791. Resubmittal of a Deficient Plan Revision.

NOTE: Authority cited: Sections 40502 and 41824, Public Resources Code. Reference: Sections 41790, 41810, 41811, 41812 and 41813, Public Resources Code.

HISTORY

1. Certificate of Compliance as to 2–15–91 order, including amendment and renumbering of prior section 18791 to section 18790, transmitted to OAL 4–29–91 and filed 5–29–91 (Register 91, No. 37). For prior history, see Register 91, No. 13.

Article 9.0. Annual Report Regulations

§ 18794.0. General Requirements and Due Dates.

(a) Each jurisdiction shall submit an annual report that discusses the progress achieved in implementing the programs and/or facilities described in a jurisdiction's Planning Documents. Planning Documents include the Source Reduction and Recycling Element (SRRE), Household Hazardous Waste Element (HHWE), Nondisposal Facility Element (NDFE), Siting Element (SE), Summary Plan, or Petition for Reduction.

(b) The annual report shall also discuss the progress a jurisdiction has made in achieving the disposal reduction goals required by Public Resources Code (PRC) section 41780.

(c) A jurisdiction includes a City, County, City and County, or Regional Agency, as defined in Section 18801.

(d) The annual report will serve as a basis for determining if any of the Planning Documents need to be revised to reflect new or changed local and regional solid waste management programs, facilities, and other conditions, as well as to determine compliance with the mandated disposal reduction goals.

(e) Jurisdictions shall submit the annual report as follows:

(1) Jurisdictions with Planning Documents approved or conditionally approved prior to January 1, 1996, shall submit their first annual report on these approved documents by August 1, 1996.

(2) Jurisdictions that did not have any Planning Documents approved or conditionally approved prior to January 1, 1996 shall submit their first annual report by August 1 of the year following Board–approval or conditional approval of a Planning Document.

(3) Jurisdictions shall submit subsequent annual reports every August 1 thereafter, that address all of a jurisdiction's Planning Documents that have been approved or conditionally approved by the Board either during, or prior to, the previous calendar year.

(f) Jurisdictions shall submit three copies of the annual report.

(g) If a jurisdiction includes information on disaster wastes in its annual report, "disaster" shall mean a natural catastrophe such as an earthquake, fire, flood, landslide, or volcanic eruption, or, regardless of cause, any explosion, fire, or flood. In order to be considered a disaster, a local emergency or a state of emergency shall have been duly proclaimed.

(h)(1) For the purposes of this Article, "district" means a community service district that provides solid waste handling services or implements source reduction and recycling programs. Commencing on July 1, 2001, a "district" also includes a sanitary district that provides solid waste handling services or implements source reduction and recycling programs.

(2) Each district shall provide the city, county, or regional agency in which it is located, information on the programs implemented by the district and the amount of waste disposed and diverted within the district.

(3) This information shall be supplied to the city, county, or regional agency so that it may be incorporated into the annual report.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40050, 40051, 40052, 40901, 41000, 41300, 41500, 41510, 41700, 41730, 41731, 41750, 41750.1, 41751, 41780, 41801.5, 41821, 41821.2 and 41850, Public Resources Code.

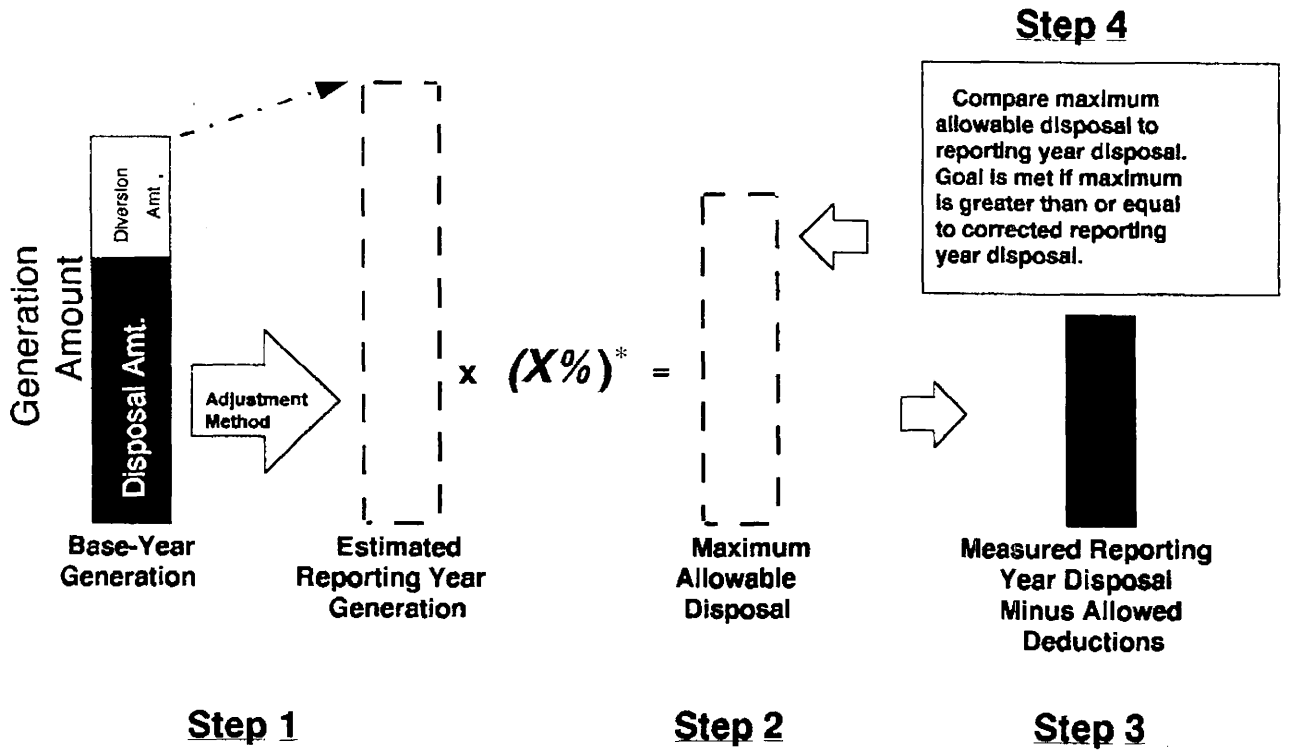
HISTORY

1. New article 9.0 (sections 18794.0–18794.6) and section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. New article 9.0 (sections 18794.0–18794.6) and section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9–25–96 order, including amendment of subsection (g) and NOTE, transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
4. Change without regulatory effect adding subsections (h)(1)–(3) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
5. Change without regulatory effect amending subsection (h)(1) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

§ 18794.1. Goal Achievement Calculations.

(a) A jurisdiction's annual report shall include the calculations described in this Section to measure achievement of the disposal reduction requirements of PRC section 41780. The diagram below shows the sequence of the calculations.

Measuring Goal Achievement



*** Where X% is normally 0.75 for years 1995 to 1999, and 0.50 for year 2000, unless a jurisdiction has a Board–approved disposal reduction goal.**

(b) Step 1. A jurisdiction shall first adjust its Board–approved base–year generation amount, as required in Section 18797.3. This adjustment yields the estimated reporting year generation amount.

(c) Step 2. A jurisdiction shall next calculate its maximum allowable disposal tonnage, as follows:

(1) A jurisdiction without a Board–approved petition for reduction in the goal shall multiply its estimated reporting year generation amount by 0.75 (75%) for the years 1995 through 1999, and by 0.50 (50%) for the year 2000 and beyond.

(2) A jurisdiction with a Board–approved petition for reduction in the goal, except for a jurisdiction that is a region as described in (3) below, shall multiply its estimated reporting year generation amount by the difference between 100% and the reduced goal. For example, if the reduced goal for 1995 is 15%, then the estimated reporting year generation amount would be multiplied by 85% (100% – 15% = 85%).

(3) A region that has at least one member agency that has a Board–approved petition for reduction in the goal, but does not have a reduced goal for the region as a whole, shall calculate its maximum allowable disposal as specified in PRC Section 41787.2.

(d) Step 3. A jurisdiction shall next deduct any tonnages from the reporting year disposal tonnage calculated pursuant to Section 18813 which it is authorized to subtract because:

(1) it meets the criteria in PRC section 41782 for claiming a reduction in its disposal tonnage because of a regional diversion facility, or regional medical waste treatment facility; and/or

(2) it has disposed of additional amounts of solid waste as a result of a disaster.

These deductions yield the corrected reporting year disposal tonnages.

(e) Step 4. A jurisdiction shall then compare its maximum allowable disposal tonnage (from Step 2) to its corrected reporting year disposal tonnage (from Step 3). The goal has been met if the maximum allowable tonnage is greater than or equal to the corrected reporting year disposal tonnage.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780, 41780.1, 41780.2, 41781, 41782, 41787.2, 41821, 41821.5 and 41850, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsections (c), (c)(2) and (e) (Register 96, No. 39).
3. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order, including amendment of subsections (d)(1) and (d)(2), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
5. Change without regulatory effect amending subsection (c)(1) filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

§ 18794.2. Reporting Requirements for Calculations.

(a) Jurisdictions who were incorporated prior to January 1, 1995 and who submit their first annual report in 1997 or later, shall include their disposal reduction calculations for 1995, in addition to their disposal reduction calculations for the current reporting year.

(b) The information used for calculating the adjustment in Section 18794.1(b) above, shall be included in a jurisdiction's annual report to the Board.

(c) If a jurisdiction is a member of a Regional Agency, then a single combined report of the information shall be made for all the members of the Regional Agency.

(d) The annual report shall include the information listed below for the calculated adjustment:

(1) Name of all jurisdictions included in the report

(2) For the jurisdiction's base–year:

(A) base–year

(B) population factor number and data source used

(C) employment factor number and data source used

(D) uncorrected taxable sales factor number and data source used

(E) consumer price index number and data source used

(F) residential generation tonnage amount

(G) non–residential generation tonnage amount.

(3) For the jurisdiction's reporting–year:

(A) reporting–year

(B) population factor number and data source used

(C) employment factor number and data source used

(D) uncorrected taxable sales factor number and data source used

(E) consumer price index factor number and data source used

(F) a copy of all interim calculations used to reach the adjusted base–year tonnage amount

(G) estimated reporting–year generation as calculated using the equations in Section 18797.3.

(e) In addition to the information required by this Section, a jurisdiction may also submit in its annual report any other information it wishes the Board to consider relating to the base–year waste generation tonnage amounts, adjustment factors, or calculations. The additional information may include a discussion of why the adjustment method as described in Section 18797.3 may not fully represent a jurisdiction's local conditions, and what additional adjustments would be needed.

(f) If a jurisdiction made an adjustment in its reporting year disposal tonnages because of a regional medical waste treatment facility or regional diversion facility located within its borders, it shall provide the Board with documentation demonstrating it meets the criteria specified in PRC section 41782 for making such an adjustment.

(g) If a jurisdiction made an adjustment in its reporting year disposal tonnages because of a disaster, it shall provide the Board with documentation demonstrating that:

(1) the tonnages subtracted resulted from the disaster;

(2) the jurisdiction implemented to the extent feasible, diversion programs to maximize diversion through reuse, recycling, or composting of disaster–related solid waste; and,

(3) the tonnages subtracted are consistent with the additional tonnages reported by the facilities where the solid waste was disposed.

(h) A jurisdiction may also provide additional information related to the tons of waste disposed in California including "host–assigned" waste as described in Sections 18809, 18810, and 18811, or exported from California. The jurisdiction shall describe how this additional information was obtained.

(i) If a jurisdiction's calculations as described in Section 18794.1 above, show its disposal reduction goal has not been met, then a jurisdiction shall discuss in its annual report what possible problems may have prevented it from reaching its goal. Problems may include, but are not limited to:

(1) base–year innaccuracies;

(2) disposal reporting problems;

(3) changes in a jurisdiction's waste stream beyond the jurisdiction's control; or

(4) changes in the overall waste management system that may hinder achievement of the disposal reduction goals.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780, 41780.1, 41782, 41813, 41821, 41821.5 and 41850, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsections (d)(2)(D), (d)(3)(A)–(B), (e) and (h) (Register 96, No. 39).
3. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of subsections (d)(3)(G) and (i) (Register 97, No. 3).
5. Certificate of Compliance as to 9–25–96 order, including amendment of subsections (d)(1), (d)(2), (d)(3) and (i)(1)–(4), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
6. Editorial correction of HISTORY 5 (Register 97, No. 15).

§ 18794.3. SRRE/NDFE and HHWE Implementation.

(a) SRRE/NDFE Annual Report Requirements. Each jurisdiction shall monitor its reduction of solid waste and summarize in the annual report its progress toward achieving the mandated disposal reduction goals identified in PRC section 41780. The information provided will serve as a basis for determining whether a revision of a SRRE is needed. The SRRE/NDFE section of the annual report shall address at least the following:

(1) Implementation status of selected programs;

(2) If any selected programs were not implemented, provide an explanation;

(3) Contingency programs or other measures that have been, or will be, implemented to help achieve the disposal reduction goals;

(4) Changes to selected programs, implementation schedules, or funding sources;

(5) Efforts made to inform the public of selected programs and facilities, and to increase public participation;

(6) Any barriers that may prevent achivement of the disposal reduction goals;

(7) Any changes in the use of nondisposal facilities, both existing or planned;

(8) If a jurisdiction's calculations show its disposal reduction goal has not been met, then a jurisdiction may include an expanded discussion on items 1 through 7 above;

(9) Quantities and types of waste diverted through recycling and composting programs directly funded or operated by the jurisdiction including, but not limited to, contracts or franchises;

(10) If a jurisdiction funds or operates a program through contracts or franchises and the agreement does not contain program monitoring and reporting requirements providing the information required by (9) above, the jurisdiction may include this information at the time of the contract or franchise agreement renewal, or at the jurisdiction's five year revision, whichever comes first;

(11) The adequacy of, or the need to revise, the Solid Waste Generation Study or any other Component of the SRRE; and

(12) If a jurisdiction determines that a revision of the SRRE is necessary, the annual report shall contain a timetable for making the necessary revisions.

(b) HHWE Annual Report Requirements. Each jurisdiction shall summarize in the annual report its progress toward reducing or eliminating household hazardous waste (HHW). The information provided will serve as a basis for determining whether a revision of a HHWE is needed. The HHWE section in the annual report shall address at least the following:

(1) Implementation status of selected programs;

(2) An explanation why any selected programs were not implemented;

(3) An explanation why any programs that were implemented did not achieve expected reduction of HHW disposal;

(4) Contingency programs or measures that have been or will be implemented to increase efforts or effectiveness in achieving reduction or elimination of HHW disposal;

(5) Changes to selected programs, implementation schedules, or funding sources;

(6) Efforts made to inform the public of HHW collection events or facilities;

(7) Any barriers that may prevent the reduction or elimination of HHW disposal;

(8) The adequacy of, or the need to revise, the HHWE; and

(9) If a jurisdiction determines that a revision of the HHWE is necessary, the annual report shall contain a timetable for making the necessary revisions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40901, 40973, 41000, 41032, 41033, 41300, 41500, 41510, 41780, 41787, 41787.1, 41787.2, 41802 and 41821, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (a)(10) (Register 96, No. 39).
3. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of subsection (a) (Register 97, No. 3).
5. Certificate of Compliance as to 9–25–96 order, including amendment of subsections (a)(2), (a)(3), (a)(7), (a)(11) and (a)(12), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18794.4. Siting Element and Summary Plan Status.

(a) Each county or regional agency shall include in its annual report a discussion on the status of its Siting Element and Summary Plan. The information provided shall serve as a basis for determining if the Siting Element and/or Summary Plan should be revised.

(b) The Siting Element section in the annual report shall address at least the following:

(1) Any changes in the remaining disposal capacity description provided pursuant to Section 18755.5 since the Siting Element was adopted;

(2) Whether the county or regional agency has maintained, or has a strategy which provides for the maintenance of, 15 years of disposal capacity;

(3) The adequacy of, or the need to revise, the Siting Element; and

(4) If a jurisdiction determines that a revision of the Siting Element is necessary, the annual report shall contain a timetable for making the necessary revisions.

(c) The Summary Plan section in the annual report shall address at least the following:

(1) Any changes in the financing of countywide or regional programs and/or facilities and why these changes occurred;

(2) Whether new cities within the county or regional agency have incorporated since the adoption of the Summary Plan. For each new city, the city's name, date of incorporation, and population at time of incorporation shall be provided; and

(3) If a jurisdiction determines that a revision of the Summary Plan is necessary, the annual report shall contain a timetable for making the necessary revisions.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40051, 40052, 40703, 41701, 41721, 41721.5, 41751, 41770 and 41821, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (c)(2) (Register 96, No. 39).
3. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order, including new subsection (b)(1), subsection renumbering, and amendment of subsection (c)(3), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18794.5. Status of Qualifying Conditions for Board–approved Petitions for Reduction.

(a) Jurisdictions with a Board–approved petition for reduction shall address the following in their annual reports:

(1) Whether the jurisdiction still qualifies to petition for the reduction as discussed in Section 18775(a);

(2) Whether the reduction is still needed, based on the Board–approved petition and items addressed in Section 18775(c).

(b) The Board may, upon review of the annual report, find that a revision or revocation of the reduction is necessary. The Board shall present any such findings at a public hearing.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 40973, 41787, 41787.1, 41802 and 41821, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18794.6. Addressing an Area–of–Concern, or Conditionally Approved Planning Documents.

(a) Reporting Requirements for Areas–of–Concern. Each jurisdiction with a Planning Document for which the Board identified an area–of–concern at the time it was approved or conditionally approved, may address the concern in its annual report. Once the concern has been adequately addressed by the jurisdiction, it no longer needs to be addressed in subsequent annual reports. If a jurisdiction does not adequately address an area of concern in the annual report, the Board may consider it during its biennial review pursuant to PRC section 41825.

(b) Reporting Requirements for Conditional Approvals. Each jurisdiction with a Planning Document that was conditionally approved by the Board shall discuss how it has met the conditions in its annual report. The conditions are listed in the Resolution in which the Board conditionally approved the planning document. The Resolution is attached to the Notification letter sent to a jurisdiction pursuant to PRC section 41810. Once the conditions have been adequately addressed, they no longer need to be addressed in subsequent annual reports.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41801.5, 41802, 41810 and 41821, Public Resources Code.

HISTORY

1. New section filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (b) (Register 96, No. 39).
3. New section refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order, including amendment of subsection (b), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 9.1. Adjustment Method for Calculating Changes in Waste Generation Tonnage

§ 18797.0. Scope and Purpose.

(a) The primary purpose of this Article is to implement section 41780.1(c) of the Public Resources Code.

(b) The adjustment method described in this Article has been selected by the Board as the standard method that shall be used to adjust the base-year generation tonnage amount. The resulting adjusted base-year generation tonnage number is an estimate of the generation tonnage in the reporting-year. This number will be used to calculate a jurisdiction's maximum allowable disposal amount, pursuant to section 18794.1(c).

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. Renumbering of former article 9.3 (sections 18827–18831) to article 9.1 (sections 18797.0–18797.4) and renumbering of former section 18827 to section 18797.0 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former article 9.3 (sections 18827–18831) to article 9.1 (sections 18797.0–18797.4) and renumbering of former section 18827 to section 18797.0 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9–25–96 order, including amendment of subsection (b), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
4. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18797.1. Definitions.

(a) For the purposes of this Article, the following terms have the meanings given below.

(1) "Adjustment Factors" means population, employment, taxable sales, and inflation numbers as used in the adjustment method.

(2) "Adjustment Method" means the method approved by the Board for jurisdictions to use in adjusting their base-year generation tonnage to account for changes in population, employment, taxable sales, and inflation occurring between the base-year and the reporting-year as described in this Article.

(3) "Base-Year Generation" means the combined base-year tonnage amount of disposed and diverted wastes, as approved by the Board pursuant to section 41801 of the Public Resources Code.

(4) "Industry Employment" means employment by place of work.

(5) "Jurisdiction" means a city, unincorporated county, city and county, or regional agency with responsibility for waste management. This definition is in addition to the definition found in section 18720(a)(33).

(6) "Labor Force Employment" means employment by place of residence.

(7) "Non-Residential Solid Waste" means all solid waste other than residential solid waste, including self-haul waste from non-residential sources.

(8) "Region" means an entity formed pursuant to sections 40970 through 40975 of the Public Resources Code. This definition supersedes the definition found in section 18720(a)(57).

(9) "Reporting-Year Generation" means the estimate of a jurisdiction's combined tonnage of disposed and diverted wastes for any calendar year following the base-year. The reporting-year generation estimate is derived by using the adjustment method set forth in this Article to adjust the base-year generation tonnage amount.

(10) "Residential Solid Waste" means all solid waste originating from single-family and multi-family dwellings, including self-haul wastes from residential sources. This definition is in addition to the definition in section 18720(a)(59).

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. Renumbering of former section 18828 to 18797.1 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 18828 to section 18797.1 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
4. Repealer of subsections (a)(1)–(8) and new subsections (a)(1)–(10) filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18797.2. Adjustment Factor Sources.

A jurisdiction shall perform the adjustment method using adjustment factor sources as follows:

(a) A jurisdiction shall use the following sources for factor numbers for any given calendar year:

(1) Employment as reported by the California Employment Development Department:

- countywide labor force employment, or
- countywide industry employment, or
- countywide industry employment for the non-residential adjustment factor, and countywide labor force employment for the residential adjustment factor.

(2) Population as reported by the California Department of Finance:

- countywide population, or
- jurisdiction population.

(3) Inflation as represented by the Consumer Price Index reported by the California Department of Industrial Relations:

- statewide Consumer Price Index, or
- metropolitan area Consumer Price Index.

(4) Taxable Sales as reported by the California State Board of Equalization:

- countywide Taxable Sales, or
- jurisdiction Taxable Sales.

(b) Notwithstanding subdivision (a) of this section, if a jurisdiction believes that any of the adjustment factor numbers do not validly represent the jurisdiction's population and/or economy, a jurisdiction may instead perform the adjustment method using one or more countywide or jurisdiction factor numbers from other sources, if the following conditions are met:

(1) A jurisdiction shall select a scientifically reliable, third party source for each of the jurisdiction-supplied adjustment factor numbers used. Possible sources include, but are not limited to, studies by the U.S. Census, State Agencies, Regional Councils of Government, Municipal Chambers of Commerce, accredited Universities or Colleges, or professionally recognized consultants in the field of economics, geography, or demographics. A jurisdiction shall submit a copy of each source document used to the Board at the time of the annual report.

(2) For each factor, the jurisdiction shall use the same source for both the base-year factor number and the reporting-year factor number when performing the calculations. If a base-year factor number for employment is not available, and the factor number for the year following the base-year reflects increased or no employment growth since the base-year, then the factor number for the year following the base-year may be used for the base-year factor number. A jurisdiction shall substantiate increased or no employment growth since the base-year with corroborative data from at least one scientifically reliable, third party source as described in subdivision (b)(1) of this section. A jurisdiction shall submit a copy of each source document used for the corroborative data to the Board at the time of the annual report.

(3) Board approval of the use of alternative sources. In reviewing alternative sources, the Board shall consider any jurisdiction-supplied adjustment factor numbers and sources to determine if they meet the requirements of subdivisions (b)(1) and (b)(2) of this section. If the Board disapproves any adjustment factor numbers and/or sources, a jurisdiction may choose other factor numbers and/or sources for Board consideration.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. Renumbering of former section 18829 to section 18797.2 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 18829 to section 18797.2 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction restoring inadvertently omitted subsection (a)(2) (Register 97, No. 3).
4. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
5. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18797.3. Adjustment Method Calculation.

(a) If a jurisdiction is a region, then the tonnage amounts, and adjustment factor number for all cities and unincorporated counties included in the region's regional agreement, shall be summed before calculating the single adjustment for the region's base–year generation.

(b) Before calculating the adjustment, a jurisdiction shall separate the base–year generation tonnage by source into residential and non–residential amounts. If a jurisdiction cannot derive the actual residential and non–residential amounts from its records, the jurisdiction may make a best estimate of how much of their base–year generation is from residential sources and how much is from non–residential sources.

(c) When calculating the values in subdivision (e) of this section, and calculating the adjusted base–year generation tonnage in subdivision (f) of this section, a jurisdiction shall use the values defined below:

RWGB	=	Base–Year Residential Waste Generation in Tons
NRWGB	=	Base–Year Non–Residential Waste Generation in Tons
PR	=	Reporting–Year Population in Persons
PB	=	Base–Year Population in Persons
ER_{LF}	=	Reporting–Year Labor Force Employment in Jobs
ER_{IN}	=	Reporting–Year Industry Employment in Jobs
EB_{LF}	=	Base–Year Labor Force Employment in Jobs
EB_{IN}	=	Base–Year Industry Employment in Jobs
TR	=	Reporting–Year Taxable Sales in Dollars
TB	=	Base–Year Taxable Sales in Dollars
CPIR	=	Reporting–Year Consumer Price Index
CPIB	=	Base–Year Consumer Price Index

For example, in the hypothetical jurisdiction of "Surfcity":

RWGB	=	15,000 tons
NRWGB	=	20,000 tons
PR	=	12,000 persons
PB	=	10,000 persons
ER_{LF}	=	6,000 jobs
EB_{LF}	=	5,500 jobs
TR	=	3,100,000 dollars
TB	=	3,000,000 dollars
CPIR	=	154.0
CPIB	=	130.7

(d) Before calculating values other than those described in section 18797.2(b) for the equations in subdivision (e) of this section, a jurisdiction shall select one of three countywide employment factor number sets:

(1) Labor force employment for calculating the non–residential adjustment factor and the residential adjustment factor; or

(2) Industry employment for calculating the non–residential adjustment factor and the residential adjustment factor, or

(3) Industry employment for calculating the non–residential adjustment factor and labor force employment for calculating the residential adjustment factor.

(e) Before performing the adjustment calculation, a jurisdiction shall calculate values for the four equations below:

(1) IM = Inflation Multiplier:

$$IM = \frac{CPI_B}{CPI_R}$$

Example:

$$IM = \frac{130.7}{154.0}$$

$$= 0.8487$$

(2) CT_R = Corrected Reporting–Year Taxable Sales in Dollars:

$$CT_R = TR \times IM$$

Example:

$$CT_R = 3{,}100{,}000 \times 0.8487$$
$$= 2{,}630{,}970$$

(3) NRAF = Non–Residential Adjustment Factor:

$$NRAF = \frac{(ER / EB) + (CT_R / TB)}{2}$$

Example 3a: Use Labor Force Employment in NRAF

$$NRAF_{LF} = \frac{(6{,}000/5{,}500) + (2{,}630{,}970/3{,}000{,}000)}{2}$$

$$= 0.984$$

Example 3b: Use Industry Employment in NRAF

$$NRAF_{IN} = \frac{(4{,}500/3{,}950) + (2{,}630{,}970/3{,}000{,}000)}{2}$$

$$= 1.008$$

(4) RAF = Residential Adjustment Factor:

$$RAF = \frac{(PR / PB) + NRAF}{2}$$

Example 4a: Use $NRAF_{LF}$

$$RAF_{LF} = \frac{(12{,}000/10{,}000) + 0.984}{2}$$

$$= 1.092$$

Example 4b: Use $NRAF_{IN}$

$$RAF_{IN} = \frac{(12{,}000/10{,}000) + 1.008}{2}$$

$$= 1.104$$

(f) Using the variables defined in subdivisions (c) and (e) of this section, a jurisdiction shall calculate the adjusted base–year generation tonnage using the equation below:

ERYG = Estimated Reporting–Year Generation:
$(RWG_B \times RAF) + (NRWG_B \times NRAF)$

Example 1: Use RAF_{LF} and $NRAF_{LF}$

$$ERYG = (RWG_B \times RAF_{LF}) + (NRWG_B \times NRAF_{LF})$$
$$= (15{,}000 \times 1.092) + (20{,}000 \times 0.984)$$
$$= 36{,}060 \text{ tons}$$

Example 2: Use RAF_{IN} and $NRAF_{IN}$

$$ERYG = (RWG_B \times RAF_{IN}) + (NRWG_B \times NRAF_{IN})$$
$$= (15{,}000 \times 1.104) + (20{,}000 \times 1.008)$$
$$= 36{,}720 \text{ tons}$$

Example 3: Use RAF_{LF} and $NRAF_{IN}$
ERYG = $(RWG_B \times RAF_{LF}) + (NRWG_B \times NRAF_{IN})$
= (15,000 x 1.092) + (20.000 x 1.008)
= 36,540 tons

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. Renumbering of former section 18830 to section 18797.3 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 18830 to section 18797.3 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (a) (Register 97, No. 3).
4. Certificate of Compliance as to 9–25–96 order, including amendment of subsections (d)(1)–(e), transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
5. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18797.4. Reporting Requirements.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. Renumbering and repealer of subsections (b)–(d) of former section 18831 to section 18797.4 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
2. Renumbering and repealer of subsections (b)–(d) of former section 18831, including repealer of subsection (a) designator, to section 18797.4 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9–25–96 order, including repealer of section, transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

Article 9.2. Disposal Reporting System

§ 18800. Scope and Purpose.

(a) This Article implements sections 41821.5 and 41821.2 of the Public Resources Code.

(b) Each jurisdiction in California must adopt a Source Reduction and Recycling Element showing how it will meet the diversion goals in section 41780 of the Public Resources Code. Diversion goal achievement is one of the factors that the Board will consider in its biennial review of Source Reduction and Recycling Element implementation pursuant to section 41825 of the Public Resources Code. To determine if it has met the goals, a jurisdiction will need to calculate how much solid waste it has disposed. The Disposal Reporting System in this Article shall be used to estimate the amount of disposal from each jurisdiction. The amount of disposal shall be compared to the maximum disposal tonnages calculated in section 18794.1 of Article 9.0.

(c) Nothing in this Article shall prevent an agency, district, or a jurisdiction from requiring haulers or operators to supply additional disposal information based upon their own authority to impose requirements on haulers or operators.

(d) Sections 18802, 18803, 18805, 18806, and 18807 of this Article are repealed. The content of the repealed sections has been modified and reorganized to provide information by type of entity in individual sections as follows:

(1) Hauler: Section 18808.

(A) Section 18808.4: Hauler Records: Retention, Access, and Investigations

(B) Section 18808.5: Identifying Jurisdiction of Origin

(C) Section 18808.6: Frequency of Origin Surveys

(D) Section 18808.8: Applicability of Alternative Reporting Systems

(E) Section 18808.10: Export Reporting Due Dates for a Public Contract Hauler

(2) Station: Section 18809.

(A) Section 18809.4: Station Records: Retention, Access, and Investigations

(B) Section 18809.5: Identifying Jurisdiction of Origin

(C) Section 18809.6: Frequency of Origin Surveys

(D) Section 18809.8: Applicability of Alternative Reporting Systems

(E) Section 18809.10: Disposal Reporting Due Dates for a Station

(3) Landfill: Section 18810.

(A) Section 18810.4: Landfill Records: Retention, Access, and Investigations

(B) Section 18810.5: Identifying Jurisdiction of Origin

(C) Section 18810.6: Frequency of Origin Surveys

(D) Section 18810.8: Applicability of Alternative Reporting Systems

(E) Section 18810.10: Disposal Reporting Due Dates for a Landfill

(4) Transformation Facility: Section 18811.

(A) Section 18811.4: Transformation Facility Records: Retention, Access, and Investigations

(B) Section 18811.5: Identifying Jurisdiction of Origin

(C) Section 18811.6: Frequency of Origin Surveys

(D) Section 18811.8: Applicability of Alternative Reporting Systems

(E) Section 18811.10: Disposal Reporting Due Dates for a Transformation Facility

(5) Agency: Section 18812.

(A) Section 18812.4: Agency Records: Retention, Access, and Investigations

(B) Section 18812.5: Identifying Jurisdiction of Origin

(C) Section 18812.6: Frequency of Origin Surveys

(D) Section 18812.8: Applicability of Alternative Reporting Systems

(E) Section 18812.10: Disposal Reporting Due Dates for an Agency

(6) Jurisdiction: Section 18813.

(A) Section 18813.4: Jurisdiction Records: Retention, Access, and Investigations

(B) Section 18813.5: Identifying Jurisdiction of Origin

(C) Section 18813.6: Frequency of Origin Surveys

(D) Section 18813.8: Applicability of Alternative Reporting Systems

(E) Section 18813.10: Disposal Reporting Due Date Information

(7) District: Section 18814.

(A) Section 18814.4: District Records: Retention, Access, and Investigations

(B) Section 18814.5: Identifying Jurisdiction of Origin

(C) Section 18814.6: Frequency of Origin Surveys

(D) Section 18814.8: Applicability of Alternative Reporting Systems

(E) Section 18814.10: Disposal Reporting Due Dates for a District

(e) Sections 18809.2(b), 18809.6(b), 18810.2(b), 18810.6(b), and 18811.6(b) of this Article contain provisions for facilities located in rural cities and counties. Rural cities and counties are defined in sections 40183 and 40184 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New Article 9.0 (sections 18800–18813) and section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Renumbering of former article 9.0 (sections 18800–18813) to article 9.2 (sections 18800–18813) and amendment of subsection (b) filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (b) (Register 96, No. 39).
4. Renumbering of former article 9.0 (sections 18800–18813) to article 9.2 (sections 18800–18813 and amendment of subsection (b) refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
6. Change without regulatory effect amending subsection (a) and adding subsection (d) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
7. Change without regulatory effect amending subsection (d) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

8. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18801. Definitions.

(a) For the purposes of this Article, the following terms have the meanings given below.

(1) "Agency" means the local agency responsible for compiling the disposal information from haulers and operators. The county is the agency, unless a region is given the responsibility as part of a regional agreement.

(2) "Airspace utilization factor" (AUF) (tons of waste per cubic yard of landfill airspace) means the effective density of waste material in the landfill. The AUF is recorded as the total weight of waste material passing over the landfill scales that is placed in a known volume of landfill airspace in a given time period. The waste portion of the AUF should include only waste material for which payment of fees to the Board is reported.

(3) "Alternative daily cover" has the same meaning as in section 20690 of Title 27 of the California Code of Regulations.

(4) "Alternative intermediate cover" has the same meaning as in section 20700 of Title 27 of the California Code of Regulations.

(5) "Beneficial reuse" has the same meaning as in section 20686 of Title 27 of the California Code of Regulations.

(6) "Board" means the California Integrated Waste Management Board.

(7) "Construction and Demolition (C&D) Debris" has the same meaning as in section 17381(e) of Title 14 of the California Code of Regulations.

(8) "Designated waste" has the same meaning as defined in section 13173 of the California Water Code.

(9) "Disaster waste" has the same meaning as "disaster debris" in section 17210.1(d) in Title 14 of the California Code of Regulations.

(10) "Dispatcher" means a person who sends a public contract hauler on a specific route or to specific locations to collect solid waste for delivery to a solid waste facility. A "dispatcher" keeps records on the locations to which haulers are sent to collect and deliver waste.

(11) "District" means a community service district established in accordance with Government Code section 61000 et seq., that provides solid waste handling services or implements source reduction and recycling programs. "District" also includes a sanitary district or a public utility district that provides solid waste handling services or implements source reduction and recycling programs.

(12) "Export from California" means export outside the boundaries of the State of California or to Indian country within the boundaries of the State of California, as defined in section 1151 of Title 18 of the United States Code.

(13) "Facility" means a permitted solid waste facility, as defined in section 18720(a)(51) of the California Code of Regulations. "Facility" includes, but is not limited to transfer stations, landfills, and transformation facilities.

(14) "Gatehouse attendant" means a person who processes deliveries from haulers transporting solid waste to a facility and who may be responsible for obtaining jurisdiction of origin information.

(15) "Hauler" means a person who collects solid waste from a solid waste generator, or collects his or her own waste, and transports the waste to a solid waste facility. "Hauler" includes a public contract hauler. "Hauler" does not include a person who transports solid waste from a station to another facility.

(16) "Host jurisdiction" means a jurisdiction in which a permitted solid waste facility is located.

(17) "Import from outside California" means import of waste from outside the boundaries of the State of California or from Indian country within the boundaries of the State of California, as defined in section 1151 of Title 18 of the United States Code.

(18) "In–place waste density" (pounds of waste per cubic yard of waste) means the estimated or measured density of in–place waste material achieved by mechanical or other means in the development of the current lift of the current operating waste cell.

(19) "Inert debris" has the same meaning as in section 17381(k) of Title 14 of the California Code of Regulations.

(20) "Jurisdiction" means a city, county, city and county, or regional agency with responsibility for waste management. This definition is in addition to the definition found in section 18720(a)(33).

(21) "Load" means the solid waste delivered to a solid waste facility in a single vehicle at one time.

(22) "Operator" means a person who operates a permitted solid waste facility.

(23) "Origin survey" or "survey" means a method for determining the jurisdiction(s) of origin for solid waste delivered to a facility.

(24) "Public contract hauler" means a person who charges for or is paid for collecting solid waste from a solid waste generator and transporting the waste to a solid waste facility. A person involved in a solid waste enterprise or solid waste handling services as defined in sections 49504 and 49505 of the Public Resources Code respectively, and a person who is a franchise hauler meet the definition of a public contract hauler. A "public contract hauler" may collect solid waste from residential, commercial, industrial, or other generators.

(25) "Quarter" means one of the following four three–month periods in a calendar year: The first quarter begins January 1 and ends March 31. The second quarter begins April 1 and ends June 30. The third quarter begins July 1 and ends September 30. The fourth quarter begins October 1 and ends December 31.

(26) "Region" means an entity formed pursuant to sections 40970 through 40975 of the Public Resources Code. This definition supersedes the definition found in section 18720(a)(57) of the California Code of Regulations for the purposes of this Article.

(27) "Soil" includes clean or contaminated soil.

(A) "Clean (or noncontaminated) soil" means soil that does not contain other materials, or is below designated concentrations of contamination for other materials as allowed pursuant to section 13173 of the California Water Code.

(B) "Contaminated soil" means soil that:

(i) contains designated or nonhazardous concentrations, as set forth in Title 23, Chapter 15, Article 1, section 2510 et seq. of the California Code of Regulations, of petroleum hydrocarbons, such as gasoline and its components (benzene, toluene, xylene, and ethylbenzene), diesel and its components (benzene), virgin oil, motor oil, or aviation fuel, and lead as an associated metal; and

(ii) has been determined pursuant to section 13263(a) of the Water Code to be a waste that requires regulation by the Regional Water Quality Control Board or Local Oversight Agency.

(28) "Solid waste" or "waste" has the same meaning as defined in section 40191 of the Public Resources Code.

(29) "Station" means a permitted solid waste facility utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport. "Station" includes permitted transfer or processing stations or facilities, and permitted materials recovery facilities. "Station" does not include permitted transformation facilities or landfills.

(30) "Track" means to collect origin information and determine tonnage for loads of waste delivered to a facility and to maintain a record of the origin and tonnage information. Data tracked during a quarter is used to compile quarterly reports.

(31) "Waste–to–cover ratio" (estimated) (volume:volume) means the unit–less expression of the proportion of the volumes of waste and cover that comprise a volume of compacted fill material, e.g. 4:1. The cover portion of the waste–to–cover ratio estimate should include only soil or approved daily or intermediate alternative cover that is not considered a waste material, i.e., payment of fees to the Board is not required. The waste portion of the waste–to–cover ratio estimate should include only waste material for which payment of fees to the Board is reported.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (a)(2) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).
3. Change without regulatory effect adding subsection (a)(4) and renumbering subsections filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
4. Change without regulatory effect amending subsection (a)(1) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).
5. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18801.1. Use of Soil for Alternative Daily Cover, Alternative Intermediate Cover, or Beneficial Reuse.

(a) Alternative daily cover does not include the use of clean or contaminated soil segregated prior to receipt by a landfill; however, loads of materials used for alternative daily cover may include small amounts of soil (such as found in construction and demolition waste loads). For the purpose of this Article, amounts of alternative daily cover shall be reported separately from amounts of alternative intermediate cover and from amounts of other beneficial on–site reuse.

(b) Alternative intermediate cover does not include the use of clean or contaminated soil segregated prior to receipt by a landfill; however, loads of materials used for alternative intermediate cover may include small amounts of soil (such as found in construction and demolition waste loads). For the purpose of this Article, amounts of alternative intermediate cover shall be reported separately from amounts of alternative daily cover and from amounts of other beneficial on–site reuse.

(c) Beneficial reuse does not include the use of clean or contaminated soil segregated prior to receipt by a landfill; however, loads of materials reused beneficially may include small amounts of soil (such as found in construction and demolition waste loads). For the purpose of this Article, amounts of other beneficial reuse shall be reported separately from amounts of alternative daily cover and from amounts of alternative intermediate cover.

(d) For the purposes of this Division, clean soil and contaminated soil used as cover or for other beneficial reuse do not count as disposal or diversion.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18802. Records: Retention, Access, and Audits.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Repealer filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18803. Applicability and Alternative Reporting Systems.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (c)(2) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).
3. Repealer filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18804. Non–Compliance.

(a) This section outlines the Board's process for handling allegations of non–compliance:

(1) If an agency receives written information on specific allegations of non–compliance pursuant to sections 18808.11(a) and (b), 18809.11(a) and (b), 18810.11(a) and (b), 18811.11(a) and (b), 18812.11(a), 18813.11(a) and (b), and 18814.11(a) and (b), it shall forward this information to the Board. The agency shall send this information in writing, with any additional information it has regarding specific allegations of non–compliance, no later than 60 working days after receiving the information.

(2) If an agency has its own specific allegations of hauler or operator non–compliance, the agency shall forward the information, in writing, to the Board pursuant to section 18812.11(c).

(3) A hauler, operator, jurisdiction, or district may forward information on specific allegations of agency non–compliance in writing to the Board as set forth in sections 18808.11(c), 18809.11(c), 18810.11(c), 18811.11(c), 18813.11(c), and 18814.11(c).

(4) Board staff shall work with affected parties to investigate and attempt to resolve allegations of non–compliance, including allowing the entity accused of non–compliance a reasonable opportunity to provide relevant information regarding the allegations. If Board staff substantiates the allegations and cannot resolve them, then the Board shall make a determination on the allegations of non–compliance at a public meeting. Based on a finding of non–compliance, the Board may take one or more of the following actions:

(A) notify the affected jurisdictions of the Board's finding of non–compliance,

(B) publish the name of the hauler or operator and the finding of non–compliance for a three–year period, using electronic or print media, or

(C) other actions as the Board deems necessary.

(5) If the Board, based on its own investigation, determines that a hauler, operator, jurisdiction, agency, or district is not complying with the requirements of this Article, the Board may take one of the following actions:

(A) notify the affected jurisdictions of the Board's finding of non–compliance,

(B) publish the name of the hauler or operator and the finding of non–compliance for a three–year period, using electronic or print media, or

(C) other actions as the Board deems necessary.

(6) If an agency, a public contract hauler, or an operator that is a jurisdiction fails to comply with this Article, and that failure prevents the Board from accurately determining the agency's or jurisdiction's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

(b) Nothing in this Article shall prevent an agency, district, or jurisdiction from enacting ordinances or other measures to ensure that operators and haulers comply with the requirements of this Article.

NOTE: Authority cited: Sections 40502 and 41825, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18805. Origin Survey Frequency.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Editorial correction of subsection (c)(2) (Register 95, No. 25).
3. Amendment of subsection (c)(2) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).
4. Repealer filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18806. Identifying a Jurisdiction of Origin.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Repealer filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18807. Disposal Reporting Due Dates.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Change without regulatory effect adding subsection (e) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
3. Repealer filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808. Disposal Reporting Requirements for a Hauler.

(a) Sections 18808.1 through 18808.11 establish the requirements for a hauler as follows:

(1) Signage for a Hauler	Section 18808.1
(2) Scales and Weighing Requirements for a Hauler	Section 18808.2
(3) Training Requirements for a Public Contract Hauler	Section 18808.3
(4) Hauler Records: Retention, Access, and Investigations	Section 18808.4
(5) Identifying Jurisdiction of Origin	Section 18808.5
(6) Frequency of Origin Surveys	Section 18808.6
(7) Determining Origin of Waste for a Hauler	Section 18808.7
(8) Applicability of Alternative Reporting Systems	Section 18808.8
(9) Public Contract Hauler Export Reports: Content, Timing, and Distribution	Section 18808.9
(10) Export Reporting Due Dates for a Public Contract Hauler	Section 18808.10
(11) Non–compliance	Section 18808.11

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (b) and NOTE filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 45).
3. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.1. Signage for a Hauler. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.2. Scales and Weighing Requirements for a Hauler. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.3. Training Requirements for a Public Contract Hauler.

(a) A public contract hauler shall provide training on the disposal reporting system to each vehicle driver, dispatcher, and disposal report preparer and to other employees who must comply with the requirements of this Article. Training for a vehicle driver, dispatcher, and report preparer shall cover the content of this Article as it applies to the employees' job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.4. Hauler Records: Retention, Access, and Investigations.

(a) A hauler shall prepare disposal reporting records and shall:

(1) Include all information, methods, and calculations required by this Article.

(2) Keep quarterly documentation that verifies jurisdiction of origin allocations reported to facilities and agencies pursuant to sections 18808.7 and 18808.9(a), respectively.

(3) Use a reasonable method to gather the information, such as locally required or facility specific reporting forms, electronic systems, or the optional paper or electronic reporting forms developed by the Board.

(4) Maintain all records for three years in a usable format, such as on electronic media (computer files) or paper copies.

(5) Allow representatives of involved jurisdictions, the agency, operators, districts, and the Board to inspect the records during normal business hours in a single location within California. Operators shall only be allowed to inspect records relating to their own operations. A hauler is not required to provide records of a jurisdiction's disposal information for reporting years for which the Board has already completed the biennial review cycle for the applicable jurisdiction pursuant to section 41825 of the Public Resources Code.

(A) Upon a request to review records, the hauler shall make the records promptly available for inspection. The hauler shall respond to the request within ten days, but may indicate that additional time is necessary to make the records available due to time necessary to search for, collect and examine records to respond to the request. In no case shall the inspection be delayed more than an additional 14 days, unless agreed to by the requestor.

(B) If copies of specific records are requested, either in lieu of inspection or after inspection, the hauler shall respond to the request for copies within ten days, but may indicate that additional time is necessary to make the copies due to time necessary to search for, collect and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the requestor. The hauler may charge a fee to cover the actual cost of copying. In no case shall the fee exceed ten cents per page, unless local public records act requirements establish another rate.

(C) If a hauler or operator believes that a records request includes information that has been labeled confidential or proprietary by the entity providing that information as defined in sections 17044 through 17046, the hauler shall inform the Board. The Board shall use the procedures set forth in section 17046 to determine which records, or parts of records, may be inspected.

(b) A hauler shall respond to requests for clarification regarding their records within ten days. Requests must be specific and clearly stated in writing.

(c) The Board may investigate all information, methods, and calculations pursuant to this Article. If the Board determines that any information is inaccurate, the Board may require corrected information.

(d) If a public contract hauler that is a jurisdiction fails to comply with this section, and that failure prevents the Board from accurately determining the jurisdiction's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) A hauler shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, an operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) A hauler shall identify solid waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent an agency, district, or jurisdiction from enacting ordinances or other measures to ensure that operators and haulers provide additional jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.6. Frequency of Origin Surveys.

(a) Haulers shall provide jurisdiction of origin information to facility operators during the origin survey period set forth in sections 18809.6, 18810.6, and 18811.6.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.7. Determining Origin of Waste for a Hauler.

(a) All haulers who are not public contract haulers shall determine the origin of solid waste during the origin survey period required in section 18808.6:

(1) If solid waste in a load is from only one jurisdiction, a hauler shall assign all the waste in that load to that jurisdiction.

(2) If solid waste in a load is from more than one jurisdiction, a hauler shall estimate the tons or percentage of waste from each based on a reasonable method.

(3) A hauler who delivers solid waste to a facility within California shall inform the operator of the jurisdiction(s) of origin. The hauler shall provide this information on jurisdiction of origin to the operator at the time of disposal, unless prior arrangements are made with the receiving operator. In all cases the information shall be provided no later than two weeks after the end of the quarter.

(4) When requested by a receiving operator, a hauler shall inform a receiving operator of the jurisdiction of origin for all material in each load delivered during the entire quarter identified by the receiving operator as potential alternative daily cover, alternative intermediate cover, or other beneficial reuse material based on actual load tonnage. A hauler shall also inform a receiving operator of the type or types of material being supplied.

(b) All public contract haulers shall determine the origin of solid waste during the origin survey period required in section 18808.6 as follows:

(1) If solid waste in a load is from only one jurisdiction, a public contract hauler shall assign all the waste in that load to that jurisdiction.

(2) If solid waste in a load is from more than one jurisdiction, a public contract hauler shall estimate the tons or percentage of waste from each based on a reasonable method which may include adjustments for documented waste density differences, if applicable. The methods that a public contract hauler may use to make this estimate include, but are not limited to:

(A) the number of bins emptied in each jurisdiction,

(B) the total capacity of bins emptied in each jurisdiction, or

(C) the actual waste tons collected in each jurisdiction.

(3) A public contract hauler who delivers solid waste to a facility within California shall provide jurisdiction of origin information to each operator based on company dispatcher records of hauling routes and generator locations, billing records, or other relevant records. The method a public contract hauler uses to provide jurisdiction of origin information shall be reasonably designed to provide the required information in an accurate manner and in a format that is useable by the operator. The methods that a hauler may use to provide this information are:

(A) Send the jurisdiction(s) of origin information for each load electronically.

(B) For solid waste sent directly to a landfill or transformation facility, provide the information using a multi–part ticket system in which the dispatcher gives the vehicle driver a ticket with the estimated percentage of waste from each jurisdiction in the vehicle driver's route. The dispatcher may use a bar code with origin information on the ticket. The vehicle driver gives the receiving operator a portion of the ticket with origin percentage information and keeps a portion of the ticket for the public contract hauler's records.

(C) Provide the information using an alternative method that meets the requirements of this section.

(4) The public contract hauler shall provide this information on jurisdiction of origin to the operator at the time of disposal, unless prior arrangements are made with the receiving operator. In all cases the information shall be provided no later than two weeks after the end of the quarter.

(5) When requested by a receiving operator, a public contract hauler shall inform a receiving operator of the jurisdiction of origin for all material in each load delivered during the entire quarter that the receiving operator identifies as potential alternative daily cover, alternative intermediate cover, or other beneficial reuse material. The jurisdiction of origin information shall be based on actual daily tonnage. A public contract hauler shall also inform a receiving operator of the type or types of material being supplied.

(6) When requested by a receiving operator, a public contract hauler shall identify each segregated load of C&D debris/inert debris delivered during the entire quarter. The public contract hauler shall also provide the jurisdiction of origin for each load, based on actual daily tonnage.

(7) When requested by a receiving operator, a public contract hauler shall identify each segregated load of designated waste delivered during the entire quarter. The public contract hauler shall inform a receiving operator of the type or types of material being supplied. The public contract hauler shall also provide the jurisdiction of origin for each load, based on actual daily tonnage.

(8) When requested by a receiving operator, a public contract hauler shall identify each segregated load of disaster waste delivered during the entire quarter. The public contract hauler shall also provide the jurisdiction of origin for each load, based on actual daily tonnage.

(9) Pursuant to section 18808.4(a)(2), a public contract hauler shall keep documentation for verification of jurisdiction of origin allocations for each quarter. Upon request, a public contract hauler shall provide an agency with a summary of quarterly jurisdiction allocations.

NOTE: Authority cited: Sections 40502, 41781.3, 41821.5 and 43020, Public Resources Code. Reference: Sections 40508, 41821.5, and 43020, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which a hauler must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.9. Public Contract Hauler Export Reports: Content, Timing, and Distribution.

(a) For the entire quarter, a public contract hauler who exports solid waste from California shall provide the agency in which the waste originated with the total tons of solid waste exported from each jurisdiction of origin during the quarter. For each jurisdiction allocation, a public contract hauler shall identify the name of the disposal site and the state, country, or Indian country to which the waste was sent. A public contract hauler shall provide this information by the due dates in section 18808.10.

(b) Upon request by a jurisdiction, a public contract hauler shall provide the jurisdiction with a quarterly report of the tons exported from the jurisdiction by the due dates in section 18808.10. In lieu of sending quarterly information directly to a jurisdiction, a hauler may electronically submit quarterly disposal information to the Board using a format that would allow the Board to make the information available on its web site.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.10. Export Reporting Due Dates for a Public Contract Hauler.

(a) When required by this Article, a public contract hauler shall send a quarterly export report, on the amounts of solid waste exported from California, to each agency in which the exported waste originated. If re-

quested by a jurisdiction, the public contract hauler shall also send a quarterly export report to the jurisdiction as set forth in section 18808.9(b). A public contract hauler shall send the report by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year. A public contract hauler shall respond to requests for clarification regarding jurisdiction of origin allocations as specified in section 18808.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18808.11. Non–Compliance.

(a) A hauler or operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency.

(c) A hauler or operator may inform the Board if an agency fails to comply with this Article. A hauler or operator shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809. Disposal Reporting Requirements for a Station.

(a) Sections 18809.1 through 18809.11 establish the requirements for a station as follows:

(1) Signage at a Station	Section 18809.1
(2) Scales and Weighing Requirements at a Station	Section 18809.2
(3) Training Requirements for a Station	Section 18809.3
(4) Station Records: Retention, Access, and Investigations	Section 18809.4
(5) Identifying Jurisdiction of Origin	Section 18809.5
(6) Frequency of Origin Surveys	Section 18809.6
(7) Determining Origin of Waste at a Station	Section 18809.7
(8) Applicability of Alternative Reporting Systems	Section 18809.8
(9) Station Disposal Reports: Content, Timing, and Distribution	Section 18809.9
(10) Disposal Reporting Due Dates for a Station	Section 18809.10
(11) Non–compliance	Section 18809.11

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (b) and NOTE filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 45).
3. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.1. Signage at a Station.

(a) An operator may post a sign regarding the collection of waste origin information during the origin survey period specified in section 18809.6(a) or (b).

(b) The sign may include the following:

(1) "State law requires information on where your waste is from. Be prepared to provide it to the attendant." or

(2) "Be prepared to tell the attendant where your waste is from." or

(3) Other wording reasonably similar to the wording in subsection (1) or (2).

(c) The sign may be translated into additional languages, including but not limited to Spanish.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.5 and 43020, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.2. Scales and Weighing Requirements at a Station.

(a) A station shall be equipped with scales if both of the following criteria apply:

(1) the station accepts an annual average of more than 100 tons per operating day or an annual average volume of more than 400 cubic yards of solid waste per operating day, and

(2) the station operates more than 52 days per year.

(b) A station located in a rural city or rural county, as set forth in sections 40183 and 40184 of the Public Resources Code, shall be equipped with scales if both of the following criteria apply:

(1) the station accepts an annual average of more than 200 tons per operating day or an annual average volume of more than 800 cubic yards of solid waste per operating day, and

(2) the station operates more than 52 days per year.

(c) An operator of a station equipped with scales shall weigh every uncompacted load of solid waste greater than 12 cubic yards. An operator shall also weigh every compacted load of waste. For each uncompacted load less than or equal to 12 cubic yards that is not weighed, an operator shall use volumetric conversion factors to estimate weight as described in subsection (d). If a station's scales are inoperable for a period of time, the operator shall estimate the weight of solid waste using volumetric conversion factors as described in subsection (d) until the scales are back in operation.

(d) For all solid waste that a station operator is allowed to not weigh with scales, the operator shall use reasonable, volumetric conversion factors to estimate the weight of the waste. Volumetric conversion factors used at a station shall meet the following guidelines:

(1) A volumetric conversion factor for a given vehicle and/or trailer type and/or load type (e.g. C&D debris/inert debris load) shall be derived from the average of actual weight data collected for the vehicle and/or trailer type and/or load type during a seven–day minimum weighing period conducted at least every five years. The operator shall determine individual volumetric conversion factors for all the types of vehicles and/or trailers that haul waste to the station and/or the types of loads hauled to the station. The weight data for each vehicle and/or trailer type and/or load type shall be based on a statistically representative sample of vehicles and/or trailers and/or loads.

(2) All volumetric conversion factors for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors shall be included in the station's annual report of disposal reporting methods as set forth in 18809.9(e).

(3) All volumetric conversion factors and supporting calculations and documentation shall be made available for Board staff review upon request pursuant to section 18809.4.

(4) If the Board determines that volumetric conversion factors are not reasonable or adequately supported, the Board may require the operator to collect new weight data to establish new volumetric conversion factors.

(e) An operator of a station not required to have scales as set forth in subsection (a) or (b) shall estimate the weight of every load of solid waste using reasonable and documented volumetric conversion factors for each type of vehicle and/or trailer that hauls waste to the station and/or each type of load (e.g. C&D debris/inert debris load) hauled to the station. The operator shall identify all volumetric conversion factors for each vehicle and/or trailer type and/or load type and include a description of the method used to determine the conversion factors in the station's annual report of disposal reporting methods as set forth in section 18809.9(e). The operator shall make all documentation of volumetric conversion factors available for review by Board staff upon request. If the Board determines that volumetric conversion factors are not reasonable or adequately sup-

ported, the Board may require the operator to establish new volumetric conversion factors.

(f) An operator is not to required weigh waste if the waste will be weighed at destination landfills and/or transformation facilities. If an operator determines the weight of waste by using scales at destination landfills and/or transformation facilities, the operator shall notify the agency in which the station is located in the annual report of disposal reporting methods as set forth in 18809.9(e)(7). An operator shall maintain a record of the weights obtained at all destination landfills and/or transformation facilities pursuant to section 18809.4.

(g) An operator of a station required to have scales as set forth in subsection (a) or (b) may request an exemption from the requirement to obtain scales if the station operator can demonstrate that circumstances exist that make compliance with this requirement a hardship. An operator shall submit a request for an exemption to the Board as set forth in subsections (i) through (*l*). An operator shall submit a request for an exemption no later than 150 days after January 1, 2006. If a station becomes subject to the scales requirement as set forth in subsection (a) or (b) after January 1, 2006, an operator shall submit the request for an exemption within 150 days.

(h) An operator of a station required to have scales as set forth in subsection (a) or (b) may submit a request to implement an alternative weighing system (for example, using off–site scales). An alternative weighing system must meet the minimum weighing requirements of this section. Weighing of waste at destination landfills and/or transformation facilities pursuant to subsection (f) does not require Board approval as an alternative weighing system. An operator shall submit a request for an exemption to the Board as set forth in subsections (i) through (*l*).

(i) A station operator's request for an exemption from obtaining scales or request to implement an alternative weighing system shall include the following minimum information:

(1) station name,

(2) station Solid Waste Information System (SWIS) number,

(3) station address,

(4) operator name,

(5) operator mailing address,

(6) operator telephone number,

(7) operator email address, if available,

(8) justification for the proposed exemption or alternative weighing system, such as a lack of electric utilities at the site, geographic remoteness of the site, space constraints at the site, or use of off–site scales,

(9) annual average weight (or annual average volume) of solid waste accepted per day of operation, and

(10) volumetric conversion factors to be used to estimate weight.

(j) Prior to submitting a request for an exemption from the scales requirement or a request to implement an alternative weighing system, an operator shall provide at least a 30–day notice of the proposed request to, and accept and respond to comments from applicable parties including:

(1) haulers that dispose of waste at the station,

(2) the agency in which the station is located,

(3) jurisdictions that dispose of waste at the station, and

(4) the Local Task Force established pursuant to section 18761 of this Division.

(k) An operator shall send a request for an exemption from the scales requirement or a request to implement an alternative weighing system to Board staff for review. The operator shall also send documentation showing that applicable parties were notified and include a copy of the responses to comments received on the request.

(*l*) Within 30 working days from receipt of a request, Board staff shall inform the operator, in writing, that the request is complete and accepted for filing, or that the request is deficient and what specific information is still required. Board staff shall approve or disapprove the request within 60 working days from the date the request is deemed complete. The operator may appeal the Board staff determination to the Board.

(m) If subsequent to an approval of an exemption from the scales requirement or a request to implement an alternative weighing system, the Board determines a station no longer meets the criteria of this section, the Board may rescind the approval.

(n) Nothing in this Article shall prevent an operator from weighing more loads than the minimum required by this section as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to obtain scales or requiring an operator to weigh more loads than the minimum required by this section, based upon its own authority to impose requirements on that operator.

(o) A station required to have scales as set forth in subsection (a) or (b), that has not requested and received a Board exemption from this requirement or has not received approval of an alternative weighing system, shall be required to obtain and begin operating the scales by January 1, 2007.

(p) If a station becomes subject to the scales requirement as set forth in subsection (a) or (b) subsequent to January 1, 2006, the operator shall obtain and begin operating the scales by January 1 of the year following the year the station became subject to the requirement. The operator may submit a request for an exemption from the scales requirement or a request to implement an alternative weighing system as set forth in subsections (g) through (*l*).

NOTE: Authority cited: Sections 40502, 41821.5, 43020 and 43021, Public Resources Code. Reference: Sections 40508, 41821.5, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.3. Training Requirements for a Station.

(a) A station operator shall provide training on the disposal reporting system to each gatehouse attendant and disposal report preparer and to other employees who must comply with the requirements of this Article. Training for a gatehouse attendant and report preparer shall cover the content of this Article as it applies to the employees' job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.4. Station Records: Retention, Access, and Investigations.

(a) An operator shall prepare disposal reporting records and shall:

(1) Include all information, methods, and calculations required by this Article.

(2) Keep quarterly documentation that verifies jurisdiction of origin allocations reported to facilities and agencies pursuant to sections 18809.9(a) through (c).

(3) Use a reasonable method to gather the information, such as locally required or facility specific reporting forms, electronic systems, or the optional paper or electronic reporting forms developed by the Board.

(4) Maintain all records for three years in a usable format, such as on electronic media (computer files) or paper copies.

(5) Allow representatives of involved jurisdictions, the agency, haulers, operators, districts, and the Board to inspect the records during normal business hours in a single location within California. Haulers and operators shall only be allowed to inspect records relating to their own operations. An operator is not required to provide records of a jurisdiction's disposal information for reporting years for which the Board has already completed the biennial review cycle for the applicable jurisdiction pursuant to section 41825 of the Public Resources Code.

(A) Upon a request to review records, the operator shall make the records promptly available for inspection. The operator shall respond to the request within ten days, but may indicate that additional time is necessary to make the records available due to time necessary to search for, collect and examine records to respond to the request. In no case shall the inspection be delayed more than an additional 14 days, unless agreed to by the requestor.

(B) If copies of specific records are requested, either in lieu of inspection or after inspection, the operator shall respond to the request for copies within ten days, but may indicate that additional time is necessary

to make the copies due to time necessary to search for, collect, and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the requestor. The operator may charge a fee to cover the actual cost of copying. In no case shall the fee exceed ten cents per page, unless local public records act requirements establish another rate.

(C) If a hauler or operator believes that a records request includes information that has been labeled confidential or proprietary by the entity providing that information as defined in sections 17044 through 17046, the operator shall inform the Board. The Board shall use the procedures set forth in section 17046 to determine which records, or parts of records, may be inspected.

(b) An operator shall respond to requests for clarification regarding their records within ten days. Requests must be specific and clearly stated in writing.

(c) The Board may investigate all information, methods, and calculations pursuant to this Article. If the Board determines that any information is inaccurate, the Board may require corrected information.

(d) If an operator that is a jurisdiction, fails to comply with this section, and that failure prevents the Board from accurately determining the jurisdiction's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) An operator shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, an operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) An operator shall identify waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent an agency, district, or jurisdiction from enacting ordinances or other measures to ensure that operators and haulers provide additional jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.6. Frequency of Origin Surveys.

(a) At all permitted stations, origin surveys shall be conducted continuously, each day of station operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a station located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). During the standard origin survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted stations, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board–approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a station is located authorizes the station operator to assign all waste tonnage to that city or county.

(e) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.7. Determining Origin of Waste at a Station.

(a) An operator shall determine the origin of all solid waste during the origin survey period set forth in section 18809.6.

(b) When requested by a receiving operator, an operator who sends solid waste to another facility within California shall provide the receiving operator with the jurisdiction of origin for all material in each load delivered during the entire quarter that the receiving operator identifies as potential alternative daily cover, alternative intermediate cover, or other beneficial reuse material. The jurisdiction of origin information shall be based on actual daily tonnage. An operator shall also inform a receiving operator of the type or types of material being supplied.

(c) When requested by a receiving operator, an operator who sends solid waste to another facility within California shall notify the operator of that facility of each load of C&D debris/inert debris delivered during the entire quarter. The operator shall also provide the jurisdiction of origin for each load, based on actual daily tonnage.

(d) When requested by a receiving operator, an operator who sends solid waste to another facility within California shall notify the operator of that facility of each load of disaster waste delivered during the entire quarter. The operator shall also provide the jurisdiction of origin for each load, based on actual daily tonnage.

(e) For all loads not delivered by public contract haulers, an operator shall obtain and maintain a record of the following information:

(1) the jurisdiction of origin of the waste as set forth in 18809.5, and

(2) other additional information that the operator has determined will ensure that information provided is accurate.

(f) An operator shall collect jurisdiction of origin from public contract haulers. The public contract hauler shall provide the jurisdiction of origin as specified in section 18808.7(b).

(g) If a station accepts solid waste from only one jurisdiction, the operator shall assign the waste to that jurisdiction.

(h) If an attendant is not present during regular hours of operation, and one cannot be present to obtain jurisdiction of origin information during the survey period, and the operator does not receive origin information from the haulers delivering waste, then the operator shall assign the waste to the jurisdiction in which the station is located by labeling it as "no attendant host assigned" waste. An operator shall determine quarterly percentages of the total waste assigned to a host jurisdiction and report the percentage allocations to each facility to which waste was sent, pursuant to section 18809.9(b)(4). An operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18809.9(d).

(i) If a station accepts solid waste from more than one jurisdiction, the operator shall use the information on the jurisdictions of origin for all solid waste to estimate the percentage of waste from each jurisdiction. The percentage of waste from each jurisdiction shall be based on either the total tons accepted from each jurisdiction, the total tons of solid waste from each jurisdiction after adjusting for diversion at the station, or the total tons from each jurisdiction based on a reasonable method used at the station to allocate waste.

(j) If solid waste is delivered to the station and information on the jurisdiction of origin is not provided by the delivering hauler or operator during the survey period as specified in this Article, then the operator shall assign the waste percentage to the jurisdiction in which the station is located by labeling it as "host assigned" waste and send written notification to the agency regarding hauler or operator non–compliance as specified in section 18809.11. The operator shall determine quarterly percentages of the total waste assigned to a host jurisdiction and report the percentage allocations to each facility to which waste was sent, pursuant to section 18809.9(b)(4). The operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18809.9(d).

NOTE: Authority cited: Sections 40502, 41821.5, 43020 and 43021, Public Resources Code. Reference: Section 40508, 41821.5, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which an operator must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.9. Station Disposal Reports: Content, Timing, and Distribution.

(a) Each quarter, an operator who sends solid waste to another facility within California shall provide the operator of that facility with the percentage of waste assigned to each jurisdiction as determined pursuant to section 18809.7. The operator shall provide this information by the due dates in sections 18809.10(a) and (b).

(b) An operator who sends waste to another facility in California shall send a quarterly notification to the agency in which the station is located and to each agency in which a receiving facility is located. An operator shall keep copies of the notification and all supporting documentation used to prepare the notification pursuant to the record keeping requirements in section 18809.4. The operator shall send the notifications by the due dates in section 18809.10. The quarterly notification shall contain the following information:

(1) the station name and Solid Waste Information System (SWIS) number,

(2) the reporting quarter and year,

(3) the total tons of solid waste accepted at the station,

(4) the percentage of solid waste from each jurisdiction (including host assigned waste, if applicable), based on either:

(A) the total tons of solid waste accepted from each jurisdiction,

(B) the total tons of solid waste from each jurisdiction after adjusting for diversion at the station, or

(C) the total tons of solid waste from each jurisdiction determined using a reasonable method to allocate waste,

(5) the name and Solid Waste Information System (SWIS) number of each facility in California to which waste was sent,

(6) the total initial estimated tons of solid waste sent to each facility,

(7) the total tons of each type of material identified for potential reuse as:

(A) alternative daily cover,

(B) alternative intermediate cover, and

(C) other beneficial reuse,

(8) the total tons of each type of material from each jurisdiction identified for potential reuse as:

(A) alternative daily cover, and

(B) alternative intermediate cover,

(9) the total tons of other material accepted at the station and sent off–site for reuse, recycling, or composting during the quarter, and

(10) a brief summary of the methods used to determine the jurisdictions of origin.

(c) For the entire quarter, an operator who exports waste from California shall provide the agency in which the station is located with the total tons of solid waste exported from each jurisdiction of origin during the quarter. For each jurisdiction allocation, an operator shall identify the name of the disposal site and the state, country, or Indian country to which the waste was sent. An operator shall provide this information by the due dates in section 18809.10.

(d) Upon request by a jurisdiction, an operator shall provide all quarterly information pertaining to the jurisdiction by the due dates in section 18809.10. In lieu of sending quarterly information directly to a jurisdiction, an operator may electronically submit the quarterly disposal information to the Board using a format that would allow the Board to make the information available on its web site. In addition to the information in subsections (b) and (c), a jurisdiction may request:

(1) the total tons of each type of material identified as other potential beneficial reuse material (excluding alternative daily cover and alternative intermediate cover),

(2) the total tons of C&D debris/inert debris, and

(3) the total tons of disaster waste.

(e) An operator shall send an annual report on disposal reporting methods to the agency in which the station is located. An operator shall send the annual report by the due date in section 18809.10. An operator shall keep a copy of the annual report in the station's records pursuant to section 18809.4. The report shall cover each year beginning on January 1 and ending on December 31 and shall include the following:

(1) station name and Solid Waste Information System (SWIS) number,

(2) operator name,

(3) operator mailing address,

(4) operator telephone number,

(5) operator email address, if available,

(6) number and type of scales, if applicable,

(7) notification of the use of scales at destination landfill(s) or transformation facility(ies) to weigh waste sent from the station, pursuant to section 18809.2(f), if applicable,

(8) all volumetric conversion factors used for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors pursuant to section 18809.2(d)(1) or (e),

(9) the frequency of each type of origin survey,

(10) the method(s) of determining jurisdiction of origin, including the questions gatehouse attendants ask haulers,

(11) the method(s) used to verify origin information, if applicable,

(12) the method(s) used to track C&D debris/inert debris loads, if applicable,

(13) the method(s) used to track disaster waste loads, if applicable,

(14) the method(s) of determining jurisdiction allocation amounts including:

(A) a description of the method used to determine jurisdiction of origin allocation percentages as reported in subsection (b)(4), and

(B) the percentage of annual tons of waste for each jurisdiction that were assigned based on survey week data as allowed in sections 18809.6(b) and (c), and

(C) the percentage of the total tons of solid waste sent for disposal or transformation that were based on volumetric conversion factors rather than actual weight measurements,

(15) any restrictions on which jurisdictions may use the station,

(16) any differences in station tipping fees based on jurisdiction of origin,

(17) a listing or description of the computer program(s) or method used to track waste tonnage and origin information, and

(18) the days and hours of station operation, including all significant variations in the schedule during the reporting year.

NOTE: Authority cited: Sections 40502, 41821.5, 43020 and 43021, Public Resources Code. Reference: Sections 40508, 41821.5, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.10. Disposal Reporting Due Dates for a Station.

(a) An operator of a permitted station who sends waste to another permitted station in California shall send the operator of that facility the percentage of waste assigned to each jurisdiction for the quarter as set forth in section 18809.9(a). An operator shall send this information by April 30 for the first quarter, July 31 for the second quarter, October 31 for the third quarter, and January 31 for the fourth quarter of the previous year.

(b) An operator of a permitted station who sends waste to a landfill or transformation facility in California shall send the operator of that facility the percentage of waste assigned to each jurisdiction for the quarter as set forth in section 18809.9(a). An operator shall send this information by May 15 for the first quarter, August 15 for the second quarter, November 15 for the third quarter, and February 15 for the fourth quarter of the previous year.

(c) An operator of a permitted station shall send quarterly disposal information to affected agencies as set forth in sections 18809.9(b) and (c). If requested by a jurisdiction, the operator shall also send the quarterly disposal information to the jurisdiction as described in section 18809.9(d). An operator shall send the report by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(1) An operator of a permitted station who sends waste to another facility within California shall send a notification every quarter to the agency in which the station is located and to each agency in which a receiving facility is located as set forth in section 18809.9(b).

(2) If a station operator exports waste outside of California, the operator shall send a quarterly report on the amounts of exported waste to the agency in which the station is located as set forth in section 18809.9(c).

(d) An operator of a permitted station shall send an annual report on disposal reporting methods to the agency in which the station is located, as described in section 18809.9(e). An operator shall send this annual report by March 15 for the previous year. A station operator shall respond to requests for clarification regarding jurisdiction of origin allocations as specified in section 18809.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18809.11. Non–Compliance.

(a) A hauler or operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency.

(c) A hauler or operator may inform the Board if an agency fails to comply with this Article. A hauler or operator shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810. Disposal Reporting Requirements for a Landfill.

(a) Sections 18810.1 through 18810.11 establish the requirements for a landfill as follows:

(1) Signage at a Landfill Section 18810.1
(2) Scales and Weighing Requirements at a Landfill Section 18810.2
(3) Training Requirements for a Landfill Section 18810.3
(4) Landfill Records: Retention, Access, and Investigations Section 18810.4
(5) Identifying Jurisdiction of Origin Section 18810.5
(6) Frequency of Origin Surveys Section 18810.6
(7) Determining Origin of Waste at a Landfill Section 18810.7
(8) Applicability of Alternative Reporting Systems Section 18810.8
(9) Landfill Disposal Reports: Content, Timing, and Distribution Section 18810.9
(10) Disposal Reporting Due Dates for a Landfill Section 18810.10
(11) Non–compliance Section 18810.11

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsections (c) and (d)(5) and amendment of NOTE filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 45).
3. Change without regulatory effect redesignating subsection (a) as (a)(1) and adding subsection (a)(2) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
4. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.1. Signage at a Landfill.

(a) An operator may post a sign regarding the collection of waste origin information during the origin survey period specified in section 18810.6(a) or (b).

(b) The sign may include the following:

(1) "State law requires information on where your waste is from. Be prepared to provide it to the attendant." or

(2) "Be prepared to tell the attendant where your waste is from." or

(3) Other wording reasonably similar to the wording in subsection (1) or (2).

(c) The sign may be translated into additional languages, including but not limited to Spanish.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.5 and 43020, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.2. Scales and Weighing Requirements at a Landfill.

(a) A landfill shall be equipped with scales if both of the following criteria apply:

(1) the landfill accepts an annual average of more than 100 tons per operating day or an annual average volume of more than 400 cubic yards of solid waste per operating day, and

(2) the landfill operates more than 52 days per year.

(b) A landfill located in a rural city or rural county, as set forth in sections 40183 and 40184 of the Public Resources Code, shall be equipped with scales if both of the following criteria apply:

(1) the landfill accepts an annual average of more than 200 tons per operating day or an annual average volume of more than 800 cubic yards of solid waste per operating day, and

(2) the landfill operates more than 52 days per year.

(c) An operator of a landfill equipped with scales shall weigh every uncompacted load of solid waste greater than 12 cubic yards. An operator shall also weigh every compacted load of waste. For each uncompacted load less than or equal to 12 cubic yards that is not weighed, an operator shall use volumetric conversion factors to estimate weight as described in subsection (d). If a landfill's scales are inoperable for a period of time, the operator shall estimate the weight of solid waste using volumetric conversion factors as described in subsection (d) until the scales are back in operation.

(d) For all solid waste that a landfill operator is allowed to not weigh with scales, the operator shall use reasonable, volumetric conversion factors to estimate the weight of the waste. Volumetric conversion factors used at a landfill shall meet the following guidelines:

(1) A volumetric conversion factor for a given vehicle and/or trailer type and/or load type (e.g. C&D debris/inert debris load) shall be derived from the average of actual weight data collected for the vehicle and/or trailer type and/or load type during a seven–day minimum weighing period conducted at least every five years. The operator shall determine individual volumetric conversion factors for all the types of vehicles and/or trailers that haul waste to the landfill and/or the types of loads hauled to the landfill. The weight data for each vehicle and/or trailer type and/or load type shall be based on a statistically representative sample of vehicles and/or trailers and/or loads.

(2) All volumetric conversion factors for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors shall be included in the landfill's annual report of disposal reporting methods as set forth in 18810.9(h).

(3) All volumetric conversion factors and supporting calculations and documentation shall be made available for Board staff review upon request pursuant to section 18810.4.

(4) If the Board determines that volumetric conversion factors are not reasonable or adequately supported, the Board may require the operator to collect new weight data to establish new volumetric conversion factors.

(e) An operator of a landfill not required to have scales as set forth in subsection (a) or (b), shall estimate the weight of every load of solid waste using reasonable and documented volumetric conversion factors for each type of vehicle and/or trailer that hauls waste to the landfill and/or each type of load (e.g. C&D debris/inert debris load) hauled to the landfill. The operator shall identify all volumetric conversion factors for each vehicle and/or trailer type and/or load type and include a description of the method used to determine the conversion factors used in the landfill's annual report of disposal reporting methods as set forth in section 18810.9(h). The operator shall make all documentation of volumetric conversion factors available for review by Board staff upon request. If the Board determines that volumetric conversion factors are not reasonable or adequately supported, the Board may require the operator to establish new volumetric conversion factors.

(f) An operator of a landfill required to have scales as set forth in subsection (a) or (b) may request an exemption from the requirement to obtain scales if the landfill operator can demonstrate that circumstances exist that make compliance with this requirement a hardship. An operator shall submit a request for an exemption to the Board as set forth in subsections (h) through (k). An operator shall submit a request no later than 150 days after January 1, 2006. If a landfill becomes subject to the scales requirement as set forth in subsection (a) or (b) after January 1, 2006, an operator shall submit the request for an exemption within 150 days.

(g) An operator of a landfill required to have scales as set forth in subsection (a) or (b) may submit a request to implement an alternative weighing system (for example, using off–site scales). An alternative weighing system must meet the minimum weighing requirements of this section. An operator shall submit a request for an exemption to the Board as set forth in subsections (h) through (k).

(h) A landfill operator's request for an exemption from obtaining scales or request to implement an alternative weighing system shall include the following minimum information:

(1) landfill name,

(2) landfill Solid Waste Information System (SWIS) number,

(3) landfill address,

(4) operator name,

(5) operator mailing address,

(6) operator telephone number,

(7) operator email address, if available,

(8) justification for the proposed exemption or alternative weighing system, such as a lack of electric utilities at the site, geographic remoteness of the site, space constraints at the site, occasional relief from weighing requirements during periods of time when excessive lines create public health and safety concerns, or use of off–site scales,

(9) annual average weight (or annual average volume) of waste accepted per day of operation, and

(10) volumetric conversion factors to be used to estimate weight.

(i) Prior to submitting a request for an exemption from the scales requirement or a request to implement an alternative weighing system, an operator shall provide at least a 30–day notice of the proposed request to, and accept and respond to comments from applicable parties including those listed below. However, nothing in this requirement is intended to allow any of these parties to seek or impose conditions on the requestor for favorable comments, nor does this section give them any authority to approve or disapprove the request.

(1) haulers that dispose of waste at the landfill,

(2) the agency in which the landfill is located,

(3) jurisdictions that dispose of waste at the landfill, and

(4) the Local Task Force established pursuant to section 18761 of this Division.

(j) An operator shall send a request for an exemption from the scales requirement or a request to implement an alternative weighing system to Board staff for review. The operator shall also send documentation showing that applicable parties were notified and include a copy of the responses to comments received on the request.

(k) Within 30 working days from receipt of a request, Board staff shall inform the operator, in writing, that the request is complete and accepted for filing, or that the request is deficient and what specific information is still required. Board staff shall approve or disapprove the request within 60 working days from the date the request is deemed complete. The operator may appeal the Board staff determination to the Board.

(*l*) If subsequent to an approval of an exemption from the scales requirement or a request to implement an alternative weighing system, the Board determines a landfill no longer meets the criteria of this section, the Board may rescind the approval.

(m) All volumetric conversion factor(s) used for the purposes of this Article, shall be the same as the volumetric conversion factor(s) used to determine the number of tons that are subject to the fee pursuant to section 48000 of the Public Resources Code and section 45151 of the Revenue and Taxation Code.

(n) Nothing in this Article shall prevent an operator from weighing more loads than the minimum required by this section as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to obtain scales or requiring an operator to weigh more loads than the minimum required by this section, based upon its own authority to impose requirements on that operator.

(o) A landfill required to have scales as set forth in subsection (a) or (b), that has not requested and received a Board exemption from this requirement or has not received approval of an alternative weighing system, shall be required to obtain and begin operating the scales by January 1, 2007.

(p) If a landfill becomes subject to the scales requirement as set forth in subsection (a) or (b) subsequent to January 1, 2006, the operator shall obtain and begin operating the scales by January 1 of the year following the year the landfill became subject to the requirement. The operator may submit a request for an exemption from the scales requirement or a request to implement an alternative weighing system as set forth in subsections (f) through (k).

NOTE: Authority cited: Sections 40502, 41781.3, 41821.5, 43020 and 43021, Public Resources Code. Reference: Sections 40508, 41821.5, 42245, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.3. Training Requirements for a Landfill.

(a) An operator shall provide training on the disposal reporting system to each gatehouse attendant and disposal report preparer and to other employees who must comply with the requirements of this Article. Training for a gatehouse attendant and report preparer shall cover the content of this Article as it applies to the employees' job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.4. Landfill Records: Retention, Access, and Investigations.

(a) An operator shall prepare disposal reporting records and shall:

(1) Include all information, methods, and calculations required by this Article.

(2) Keep quarterly documentation that verifies jurisdiction of origin allocations reported to the agency in which the landfill is located pursuant to section 18810.9(c).

(3) Use a reasonable method to gather the information, such as locally required or facility specific reporting forms, electronic systems, or the optional paper or electronic reporting forms developed by the Board.

(4) Maintain all records for three years in a usable format, such as on electronic media (computer files) or paper copies.

(5) Allow representatives of involved jurisdictions, the agency, haulers, operators, districts, and the Board to inspect the records during normal business hours in a single location within California. Haulers and operators shall only be allowed to inspect records relating to their own operations. An operator is not required to provide records of a jurisdiction's disposal information for reporting years for which the Board has already completed the biennial review cycle for the applicable jurisdiction pursuant to section 41825 of the Public Resources Code.

(A) Upon a request to review records, the operator shall make the records promptly available for inspection. The operator shall respond to the request within ten days, but may indicate that additional time is necessary to make the records available due to time necessary to search for, collect and examine records to respond to the request. In no case shall the inspection be delayed more than an additional 14 days, unless agreed to by the requestor.

(B) If copies of specific records are requested, either in lieu of inspection or after inspection, the operator shall respond to the request for copies within ten days, but may indicate that additional time is necessary to make the copies due to time necessary to search for, collect, and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the requestor. The operator may charge a fee to cover the actual cost of copying. In no case shall the fee exceed ten cents per page, unless local public records act requirements establish another rate.

(C) If a hauler or operator believes that a records request includes information that has been labeled confidential or proprietary by the entity providing that information as defined in sections 17044 through 17046, the operator shall inform the Board. The Board shall use the procedures set forth in section 17046 to determine which records, or parts of records, may be inspected.

(b) An operator shall respond to requests for clarification regarding their records within ten days. Requests must be specific and clearly stated in writing.

(c) The Board may investigate all information, methods, and calculations pursuant to this Article. If the Board determines that any information is inaccurate, the Board may require corrected information.

(d) If an operator that is a jurisdiction, fails to comply with this section, and that failure prevents the Board from accurately determining the jurisdiction's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) An operator shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, an operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) An operator shall identify waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent an agency, district, or jurisdiction from enacting ordinances or other measures to ensure that operators and haulers provide additional jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.6. Frequency of Origin Surveys.

(a) At all permitted landfills, origin surveys shall be conducted continuously, each day of landfill operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a landfill located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). During the standard survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted landfills, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board–approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a landfill is located authorizes the landfill operator to assign all waste tonnage to that city or county.

(e) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.7. Determining Origin of Waste at a Landfill.

(a) An operator shall determine the origin of all solid waste during the origin survey period set forth in section 18810.6.

(b) For every load of solid waste received during the entire quarter, an operator shall record the jurisdiction of origin for all beneficial reuse material accepted. An operator shall also record the types and quantities of material being used as alternative daily, alternative intermediate cover, and other beneficial reuse. Each type of material used for alternative daily cover, alternative intermediate cover, and other beneficial reuse shall be allocated to jurisdictions using a reasonable estimation method. A reasonable method for calculating allocations may include:

(1) Determining each jurisdiction's percentage of each material type accepted and multiplying by:

(A) the total amounts of alternative daily cover used,

(B) the total amounts of alternative intermediate cover used, and/or

(C) the total amounts of other beneficial reuse material used.

(c) For every load received during the entire quarter, an operator shall track the tons of each of the following types of solid waste disposed at the landfill, allocated to each jurisdiction:

(1) C&D debris/inert debris,

(2) designated waste, by material type, and

(3) disaster waste.

(d) For all loads not delivered by public contract haulers, an operator shall obtain and maintain a record of the following information:

(1) the jurisdiction of origin of the waste as set forth in 18810.5, and

(2) other additional information that the operator has determined will ensure that information provided is accurate.

(e) An operator shall collect jurisdiction of origin from public contract haulers. The public contract hauler shall provide the jurisdiction of origin as specified in section 18808.7(b).

(f) If a landfill accepts solid waste from only one jurisdiction, the operator shall assign all the waste to that jurisdiction.

(g) If an attendant is not present during regular hours of operation, and one cannot be present for the origin survey period set forth in section 18810.6, and the operator does not receive origin information from the haulers delivering waste, then the operator shall assign the waste to the jurisdiction in which the landfill is located by labeling it as "no attendant host assigned" waste. An operator shall report to the agency, the total amounts of solid waste assigned to the host jurisdiction pursuant to 18810.9(c). An operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18810.9(g).

(h) If solid waste is delivered to the facility and information on the jurisdiction of origin is not provided by the delivering hauler or operator as specified in this Article, then the operator shall assign the waste to the jurisdiction in which the landfill is located by labeling it as "host assigned" waste and send written notification to the agency regarding hauler or operator non–compliance as specified in section 18810.11. An operator shall report to the agency, the total amounts of solid waste assigned to the host jurisdiction pursuant to 18810.9(c). An operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18810.9(g).

(i) If a landfill conducts continuous daily origin surveys as set forth in section 18810.6(a) and accepts solid waste from more than one jurisdiction, then the operator shall assign the waste tonnage based on the actual jurisdiction of origin information reported by haulers and station operators. If a landfill also conducts origin surveys for uncompacted loads of 12 cubic yards or less during at least a one–week per quarter survey period, the operator shall estimate the amount of waste assigned to each jurisdiction as described in subsection (k) and add these tonnage allocations to the tonnage allocations that were based on daily origin survey information.

(j) If a landfill in a rural jurisdiction accepts solid waste from more than one jurisdiction and only conducts origin surveys during one week per quarter as set forth in section 18810.6(b), the operator shall do the following steps in order:

(1) Obtain information on the jurisdiction(s) of origin for each load of solid waste delivered to the landfill on the dates set forth in section 18810.6(b).

Example:

Four loads delivered during the survey week.

Load 1 = 5 tons from City A

Load 2 = 5 tons from City B

Load 3 = 10 tons from City C

Load 4 = 5 tons from City B

(2) Calculate the tons of solid waste (other than soil used as cover or for other on–site uses) assigned to each jurisdiction during the survey week. The operator shall either add up the amounts accepted from each jurisdiction, or the amounts of solid waste from each jurisdiction after adjusting for diversion activity at the landfill.

Example:

City A = 5 tons (Load 1)

City B = 10 tons (Load 2 + Load 4)

City C = 10 tons (Load 3)

(3) Calculate the percentage of waste assigned to each jurisdiction during the survey week by dividing the tons determined in paragraph (2) by the total tons of waste for the survey period.

Example:

25 tons delivered during the survey week.

City A = 5 tons/25 tons = 0.2 (20%)

City B = 10 tons/25 tons = 0.4 (40%)

City C = 10 tons/25 tons = 0.4 (40%)

(4) Calculate the number of tons disposed from each jurisdiction during the quarter by multiplying the percentage from paragraph (3) with the total number of tons of solid waste disposed in each quarter from section 18810.9(a).

Example:

1000 tons disposed during quarter.

City A = 0.2 x 1000 tons = 200 tons

City B = 0.4 x 1000 tons = 400 tons

City C = 0.4 x 1000 tons = 400 tons

(k) If an operator conducts origin surveys of each uncompacted load of solid waste with a volume of 12 cubic yards or less during a one–week survey period each quarter pursuant to section 18810.6(c), then the operator shall calculate the estimated tons of solid waste delivered in these loads from each jurisdiction for the quarter. The calculated tonnage allocations shall be based on the actual origin information reported by haulers during the survey period. The operator shall do the following steps in order.

(1) Obtain information on the jurisdiction(s) of origin for each uncompacted load with a volume of 12 cubic yards or less delivered to the landfill on the dates set forth in section 18810.6(c).

Example:

Four uncompacted loads of 12 cubic yards or less delivered during the survey week.

Load 1 = 0.5 ton from City A

Load 2 = 0.5 ton from City B

Load 3 = 0.5 ton from City C

Load 4 = 0.5 ton from City B

(2) Calculate the tons of solid waste (other than soil used as cover or for other on–site uses) delivered in uncompacted loads of 12 cubic yards or less assigned to each jurisdiction during the survey week. The operator shall either add up the amounts accepted from each jurisdiction, or the amounts of solid waste from each jurisdiction after adjusting for diversion activity at the landfill.

Example:

City A = 0.5 ton (Load 1)

City B = 1 ton (Load 2 + Load 4)

City C = 0.5 ton (Load 3)

(3) Calculate the percentage of solid waste assigned to each jurisdiction during the survey week by dividing the tons determined in paragraph (2) by the total tons of solid waste delivered in uncompacted loads of 12 cubic yards or less during the survey week.

Example:

2 tons delivered in uncompacted loads of 12 cubic yards or less during survey week.

City A = 0.5 ton/2 tons = 0.25 (25%)

City B = 1 ton/2 tons = 0.5 (50%)

City C = 0.5 ton/2 tons = 0.25 (25%)

(4) Calculate the number of tons delivered in uncompacted loads of 12 cubic yards or less and disposed from each jurisdiction during the quarter by multiplying the percentages from paragraph (3) with the total tons of solid waste disposed during the quarter that were delivered in uncompacted loads of 12 cubic yards or less.

Example:

100 tons delivered in uncompacted loads of 12 cubic yards or less and disposed during the quarter.

City A = 0.25 X 100 tons = 25 tons
City B = 0.5 X 100 tons = 50 tons
City C = 0.25 X 100 tons = 25 tons

NOTE: Authority cited: Sections 40502, 41781.3, 41821.5, 43020 and 43021, Public Resources Code. Reference: Sections 40508, 41821.5, 42245, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which an operator must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.9. Landfill Disposal Reports: Content, Timing, and Distribution.

(a) The following requirements shall apply to an operator of a permitted landfill:

(1) An operator shall determine the total number of tons of solid waste disposed in each quarter. The tons disposed shall be the same number of tons reported to the Board of Equalization that are subject to the fee pursuant to section 48000 of the Public Resources Code and section 45151 of the Revenue and Taxation Code.

(2) An operator of a facility that does not have to report tons disposed to the Board of Equalization pursuant to section 48007(b) of the Public Resources Codes (as added by Stats. 1999, Chapter 600), is still required to determine the total number of tons of solid waste disposed in each quarter. However, for these facilities, the tons disposed will not have to be reconciled with the tons reported to the Board of Equalization.

(3) An operator of a facility that has been exempted from the fee pursuant to section 48006 of the Public Resources Code is still required to report the total number of tons of solid waste disposed in each quarter. However, for these facilities, the tons disposed will not have to be reconciled with the tons reported to the Board of Equalization that are subject to the fee.

(b) An operator shall track the total tons of solid waste accepted by the landfill and sent off–site for reuse, recycling, or composting.

(c) An operator shall provide the following quarterly information to the agency in which the facility is located. An operator shall keep copies of the quarterly information and all supporting documentation used to prepare the information pursuant to the record keeping requirements in section 18810.4. An operator shall report, by jurisdiction of origin (including host assigned jurisdiction of origin, if applicable), information on the amounts and types of all solid waste specified in this subsection. The operator shall report:

(1) the facility name and Solid Waste Information System (SWIS) number,

(2) the reporting quarter and year,

(3) the total tons of all solid waste and all materials accepted at the facility, excluding soil used on–site,

(4) the total tons of waste reused on–site at the facility, separated as follows:

(A) the total tons of each type of alternative daily cover used during the quarter, and

(B) the total tons of each type of alternative intermediate cover used during the quarter, and

(5) the total tons of solid waste disposed at the landfill.

(d) An operator shall provide quarterly summary information to the agency in which the facility is located. The summary information shall include:

(1) the total tons of soil used as cover or for other on–site uses during the quarter,

(2) the total tons of solid waste accepted by the landfill, excluding soil used on–site,

(3) the total tons of solid waste used on–site, separated as follows:

(A) the total tons of each type of alternative daily cover,

(B) the total tons of each type of alternative intermediate cover, and

(C) the total tons of each type of other beneficial reuse material,

(4) the total tons of solid waste sent off–site for reuse, recycling, or composting,

(5) the total tons of solid waste disposed at the landfill,

(6) the total tons reported to the Board of Equalization subject to the fee pursuant to section 48000 of the Public Resources Code and section 45151 of the Revenue and Taxation Code,

(7) either:

(A) the estimated in–place density achieved at the landfill in units of pounds of waste per cubic yard of waste and the estimated waste–to–cover ratio used at the landfill during the quarter, or

(B) the airspace utilization factor (tons of waste per cubic yard of landfill airspace) for the quarter, and

(This information shall be included in the quarterly report so that the Board may accurately calculate the remaining capacity of the landfill as well as regional and statewide remaining capacity. It is not the intent of this section to subject a landfill to a Notice of Violation should it subsequently be determined that these estimates are unknowingly inaccurate.)

(8) a brief summary of the methods used to determine the jurisdictions of origin.

(e) Upon request, an operator shall provide the agency in which the facility is located with a copy of the Integrated Waste Management Fee Return submitted to the Board of Equalization.

(f) The operator shall provide all quarterly information to the agency by the due dates in section 18810.10.

(g) Upon request by a jurisdiction, an operator shall provide all quarterly information pertaining to the jurisdiction by the due dates in section 18810.10. In lieu of sending quarterly disposal information directly to a jurisdiction, an operator may electronically submit the information to the Board using a format that would allow the Board to make the information available on its web site. In addition to the amounts reported in subsection (c)(3) through (5), a jurisdiction's request for quarterly disposal information may include:

(1) the total tons of each type of other beneficial reuse material (excluding alternative daily cover and alternative intermediate cover),

(2) the total tons of C&D debris/inert debris disposed,

(3) the total tons of each type of designated waste disposed, and

(4) the total tons of disaster waste disposed.

(h) An operator shall send an annual report on disposal reporting methods to the agency in which the facility is located. An operator shall send the annual report by the due date in section 18810.10. An operator shall keep a copy of the annual report in the facility's records pursuant to section 18810.4. The report shall cover each year beginning on January 1 and ending on December 31 and shall include the following:

(1) facility name and Solid Waste Information System (SWIS) number,

(2) operator name,

(3) operator mailing address,

(4) operator telephone number,

(5) operator email address, if available,

(6) the number and type of scales, if applicable,

(7) all volumetric conversion factors used for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors pursuant to section 18810.2(d)(1) or (e),

(8) the frequency of each type of origin survey,

(9) the percentage of the total tons of disposed waste assigned to each jurisdiction that was based on:

(A) origin information collected during a one–week per quarter survey period as allowed in section 18810.6(b) or 18810.6(c), if applicable, and

(B) volumetric conversion factors rather than actual weight measurements,

(10) the method(s) of determining jurisdiction of origin, including the questions gatehouse attendants ask haulers,

(11) the method(s) used to verify origin information, if applicable,

(12) any restrictions on which jurisdictions may use the landfill,

(13) any differences in landfill tipping fees based on jurisdiction of origin,

(14) a listing or description of the computer program(s) or method used to track waste tonnage and origin information,

(15) the method(s) used to track the amounts of alternative daily cover, alternative intermediate cover, and other beneficial reuse materials used at the facility,

(16) the method(s) used to track C&D debris/inert debris loads, if applicable,

(17) the designated waste types accepted and method(s) of tracking designated wastes, if applicable,

(18) the method(s) used to track disaster waste loads, if applicable,

(19) the days and hours of operation, including all significant variations in the schedule during the reporting year, and

(20) either:

(A) the calculated in–place waste density achieved at the landfill (in pounds of waste per cubic yard of waste) and a description of the method used to calculate in–place waste density achieved at the landfill, and the calculated waste–to–cover ratio used at the landfill and a description of the method used to calculate the waste–to–cover ratio(s) used at the landfill or

(B) the airspace utilization factor (tons of waste per cubic yard of landfill airspace) and a description of the method used to calculate the airspace utilization factor.

(This information shall be included in the annual report so that the Board may accurately calculate the remaining capacity of the landfill as well as regional and statewide remaining capacity. It is not the intent of this section to subject a landfill to a Notice of Violation should it subsequently be determined that these estimates are unknowingly inaccurate).

(i) If the Board determines that an operator has inaccurately reported alternative daily cover, alternative intermediate cover, other beneficial reuse, or other diversion tonnage, that should have been reported as disposal, the operator shall revise its reported disposal tonnage to reflect the Board's determination and pay the fee required by section 48000 of the Public Resources Code.

(j) If an operator amends disposal reporting information, the operator is only required to provide the amended information to the agency once per quarter (the operator shall still allow access to records in accordance with section 18810.4). An operator is not required to provide amended disposal information for reporting years once the Board has completed the biennial review cycle for those years pursuant to section 41825 of the Public Resources Code.

NOTE: Authority cited: Sections 40502, 41781.3, 41821.5, 43020 and 43021, Public Resources Code. Reference: Sections 40508, 41821.5, 42245, 43020 and 43021, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.10. Disposal Reporting Due Dates for a Landfill.

(a) An operator of a landfill shall send a quarterly report to the agency in which the facility is located as described in sections 18810.9(c), (d), and (e), if applicable. If requested by a jurisdiction, the operator shall also send the quarterly disposal information to the jurisdiction as set forth in section 18810.9(g). An operator shall send the report by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) An operator of a landfill shall send an annual report on disposal reporting methods to the agency in which the facility is located, as described in section 18810.9(h). An operator shall send this annual report by March 15 for the previous year. An operator shall respond to requests for clarification regarding jurisdiction of origin allocations as specified in section 18810.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18810.11. Non–Compliance.

(a) A hauler or operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency.

(c) A hauler or operator may inform the Board if an agency fails to comply with this Article. A hauler or operator shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811. Disposal Reporting Requirements for a Transformation Facility.

(a) Sections 18811.1 through 18811.11 establish the requirements for a transformation facility as follows:

(1) Signage at a Transformation Facility	Section 18811.1
(2) Scales and Weighing Requirements at a Transformation Facility	Section 18811.2
(3) Training Requirements for a Transformation Facility	Section 18811.3
(4) Transformation Facility Records: Retention, Access, and Investigations	Section 18811.4
(5) Identifying Jurisdiction of Origin	Section 18811.5
(6) Frequency of Origin Surveys	Section 18811.6
(7) Determining Origin of Waste at a Transformation Facility	Section 18811.7
(8) Applicability of Alternative Reporting Systems	Section 18811.8
(9) Transformation Facility Disposal Reports: Content, Timing, and Distribution	Section 18811.9
(10) Disposal Reporting Due Dates for a Transformation Facility	Section 18811.10
(11) Non–compliance	Section 18811.11

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.1. Signage at a Transformation Facility.

(a) An operator may post a sign regarding the collection of waste origin information during the origin survey period specified in section 18811.6(a) or (b).

(b) The sign may include the following:

(1) "State law requires information on where your waste is from. Be prepared to provide it to the attendant." or

(2) "Be prepared to tell the attendant where your waste is from." or

(3) Other wording reasonably similar to the wording in subsection (1) or (2).

(c) The sign may be translated into additional languages, including but not limited to Spanish.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.2. Scales and Weighing Requirements at a Transformation Facility.

(a) An operator of a transformation facility shall weigh every uncompacted load of solid waste greater than 12 cubic yards. An operator shall also weigh every compacted load of waste. For each uncompacted load less than or equal to 12 cubic yards that is not weighed, an operator shall use volumetric conversion factors to estimate weight as described in subsection (b). If a transformation facility's scales are inoperable for a period of time, the operator shall estimate the weight of solid waste using volumetric conversion factors as described in subsection (b) until the scales are back in operation.

(b) For all solid waste that a transformation facility operator is allowed to not weigh with scales, the operator shall use reasonable, volumetric conversion factors to estimate the weight of the waste. Volumetric conversion factors used at a transformation facility shall meet the following guidelines:

(1) A volumetric conversion factor for a given vehicle and/or trailer type and/or load type (e.g. C&D debris/inert debris load) shall be derived from the average of actual weight data collected for the vehicle and/or trailer type and/or load type during a seven–day minimum weighing period conducted at least every five years. The operator shall determine individual volumetric conversion factors for all the types of vehicles and/or trailers that haul waste to the transformation facility and/or all types of loads hauled to the facility. The weight data for each vehicle and/or trailer type and/or load type shall be based on a statistically representative sample of vehicles and/or trailers and/or loads.

(2) All volumetric conversion factors for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors shall be included in the transformation facility's annual report of disposal reporting methods as set forth in 18811.9(f).

(3) All volumetric conversion factors and supporting calculations and documentation shall be made available for Board review staff upon request pursuant to section 18811.4.

(4) If the Board determines that volumetric conversion factors are not reasonable or adequately supported, the Board may require the operator to collect new weight data to establish new volumetric conversion factors.

(c) An operator of a transformation facility may submit a request to implement an alternative weighing system (for example, using off–site scales). An alternative weighing system must meet the minimum weighing requirements of this section. An operator shall submit a request to implement an alternative weighing system to the Board as set forth in subsections (d) through (g).

(d) A transformation facility operator's request to implement an alternative weighing system shall include the following minimum information:

(1) transformation facility name,

(2) transformation facility Solid Waste Information System (SWIS) number,

(3) transformation facility address,

(4) operator name,

(5) operator mailing address,

(6) operator telephone number,

(7) operator email address, if available,

(8) justification for the alternative weighing system, such as use of off–site scales,

(9) annual average weight (or annual average volume) of waste accepted per day of operation, and

(10) volumetric conversion factors to be used to estimate weight.

(e) Prior to submitting a request to implement an alternative weighing system, an operator shall provide at least a 30–day notice of the proposed request to, and accept and respond to comments from applicable parties including:

(1) haulers that dispose of waste at the transformation facility,

(2) the agency in which the transformation facility is located,

(3) jurisdictions that dispose of waste at the transformation facility, and

(4) the Local Task Force established pursuant to section 18761 of this Division.

(f) An operator shall send a request to implement an alternative weighing system to Board staff for review. The operator shall also send documentation showing that applicable parties were notified and include a copy of the responses to comments received on the request.

(g) Within 30 working days from receipt of a request, Board staff shall inform the operator, in writing, that the request is complete and accepted for filing, or that the request is deficient and what specific information is still required. Board staff shall approve or disapprove the request within 60 working days from the date the request is deemed complete. The operator may appeal the Board staff determination to the Board.

(h) If subsequent to an approval of a request to implement an alternative weighing system, the Board determines a transformation facility no longer meets the criteria of this section, the Board may rescind the approval.

(i) Nothing in this Article shall prevent an operator from weighing more loads than the minimum required by this section as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to weigh more loads than the minimum required by this section, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.3. Training Requirements for a Transformation Facility.

(a) An operator shall provide training on the disposal reporting system to each gatehouse attendant and disposal report preparer and to other employees who must comply with the requirements of this Article. Training for a gatehouse attendant and report preparer shall cover the content of this Article as it applies to the employees' job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.4. Transformation Facility Records: Retention, Access, and Investigations.

(a) An operator shall prepare disposal reporting records and shall:

(1) Include all information, methods, and calculations required by this Article.

(2) Keep quarterly documentation that verifies jurisdiction of origin allocations reported to the agency in which the transformation facility is located pursuant to section 18811.9(b).

(3) Use a reasonable method to gather the information, such as locally required or facility specific reporting forms, electronic systems, or the optional paper or electronic reporting forms developed by the Board.

(4) Maintain all records for three years in a usable format, such as on electronic media (computer files) or paper copies.

(5) Allow representatives of involved jurisdictions, the agency, haulers, operators, districts, and the Board to inspect the records during normal business hours in a single location within California. Haulers and operators shall only be allowed to inspect records relating to their own operations. An operator is not required to provide records of a jurisdiction's disposal information for reporting years for which the Board has already completed the biennial review cycle for the applicable jurisdiction pursuant to section 41825 of the Public Resources Code.

(A) Upon a request to review records, the operator shall make the records promptly available for inspection. The operator shall respond to the request within ten days, but may indicate that additional time is necessary to make the records available due to time necessary to search for, collect and examine records to respond to the request. In no case shall the inspec-

tion be delayed more than an additional 14 days, unless agreed to by the requestor.

(B) If copies of specific records are requested, either in lieu of inspection or after inspection, the operator shall respond to the request for copies within ten days, but may indicate that additional time is necessary to make the copies due to time necessary to search for, collect, and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the requestor. The operator may charge a fee to cover the actual cost of copying. In no case shall the fee exceed ten cents per page, unless local public records act requirements establish another rate.

(C) If a hauler or operator believes that a records request includes information that has been labeled confidential or proprietary by the entity providing that information as defined in sections 17044 through 17046, the operator shall inform the Board. The Board shall use the procedures set forth in section 17046 to determine which records, or parts of records, may be inspected.

(b) An operator shall respond to requests for clarification regarding their records within ten days. Requests must be specific and clearly stated in writing.

(c) The Board may investigate all information, methods, and calculations pursuant to this Article. If the Board determines that any information is inaccurate, the Board may require corrected information.

(d) If an operator that is a jurisdiction, fails to comply with this section, and that failure prevents the Board from accurately determining the jurisdiction's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) An operator shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, an operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) An operator shall identify waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent an agency, district, or jurisdiction from enacting ordinances or other measures to ensure that operators and haulers provide additional jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.6. Frequency of Origin Surveys.

(a) At all permitted transformation facilities, origin surveys shall be conducted continuously, each day of facility operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a transformation facility located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). During the standard survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted transformation facilities, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board–approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a transformation facility is located authorizes the facility operator to assign all waste tonnage to that city or county.

(e) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.7. Determining Origin of Waste at a Transformation Facility.

(a) An operator shall determine the origin of all solid waste during the origin survey period set forth in section 18811.6.

(b) During the entire quarter, an operator who sends solid waste to another facility within California shall provide the operator of that facility with the jurisdiction of origin for all material in each load identified by the receiving operator as potential alternative daily cover, alternative intermediate cover, or other beneficial reuse material based on actual daily tonnage. An operator shall also inform a receiving operator of the type or types of material being supplied.

(c) For each load received during the entire quarter, an operator shall track tons of each of the following types of solid waste that underwent transformation, allocated to each jurisdiction:

(1) C&D debris/inert debris,

(2) designated waste, by material type, and

(3) disaster waste.

(d) For all loads not delivered by public contract haulers, an operator shall obtain and maintain a record of the following information:

(1) the jurisdiction of origin of the waste as set forth in 18811.5, and

(2) other additional information that the operator has determined will ensure that jurisdiction of origin information provided is accurate.

(e) An operator shall collect jurisdiction of origin from public contract haulers. The public contract hauler shall provide the jurisdiction of origin as specified in section 18808.7(b).

(f) If a transformation facility accepts solid waste from only one jurisdiction, the operator shall assign all the waste to that jurisdiction.

(g) If an attendant is not present during regular hours of operation, and one cannot be present for the origin survey period set forth in section 18811.6, and the operator does not receive origin information from the haulers delivering waste, then the operator shall assign the waste to the jurisdiction in which the facility is located by labeling it as "no attendant host assigned" waste. An operator shall report to the agency, the total amounts of solid waste assigned to the host jurisdiction pursuant to 18811.9(b). An operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18811.9(e).

(h) If solid waste is delivered to the facility and information on the jurisdiction of origin is not provided by the delivering hauler or operator as specified in this Article, then the operator shall assign the waste to the jurisdiction in which the facility is located by labeling it as "host assigned" waste and send written notification to the agency regarding hauler or operator non–compliance as specified in section 18811.11. An operator shall report to the agency, the total amounts of solid waste assigned

to the host jurisdiction pursuant to 18811.9(b). An operator shall also provide information on host assigned waste to a host jurisdiction if requested pursuant to section 18811.9(e).

(i) If a transformation facility that conducts continuous daily origin surveys as set forth in section 18811.6(a) accepts solid waste from more than one jurisdiction, then the operator shall assign the waste based on the actual jurisdiction of origin information reported by haulers and station operators. If a transformation facility also conducts origin surveys for uncompacted loads of 12 cubic yards or less during at least a one-week per quarter survey period, the operator shall estimate the amount of waste assigned to each jurisdiction as described in subsection (k) and add these tonnage allocations to the tonnage allocations that were based on daily origin survey information.

(j) If a transformation facility in a rural jurisdiction accepts solid waste from more than one jurisdiction and only conducts origin surveys during one week per quarter as set forth in section 18811.6(b), the operator shall do the following steps in order:

(1) Obtain information on the jurisdiction(s) of origin for each load of waste delivered to the facility on the dates set in section 18811.6(b).

Example:

Four loads delivered during the survey week.

Load 1 = 5 tons from City A

Load 2 = 5 tons from City B

Load 3 = 10 tons from City C

Load 4 = 5 tons from City B

(2) Calculate the tons of solid waste assigned to each jurisdiction during the survey week. The operator shall either add up the tons of solid waste accepted from each jurisdiction, or the amounts of solid waste that underwent transformation from each jurisdiction after adjusting for front-end diversion at the transformation facility.

Example:

City A = 5 tons (Load 1)

City B = 10 tons (Load 2 + Load 4)

City C = 10 tons (Load 3)

(3) Calculate the percentage of waste assigned to each jurisdiction during the survey week by dividing the tons from paragraph (2) by the total tons of solid waste for the survey period.

Example:

25 tons delivered during the survey week.

City A = 5 tons/25 tons = 0.2 (20%)

City B = 10 tons/25 tons = 0.4 (40%)

City C = 10 tons/25 tons = 0.4 (40%)

(4) Calculate the number of tons of solid waste that underwent transformation from each jurisdiction during the quarter by multiplying the percentage from paragraph (3) with the total tons of solid waste that underwent transformation in each quarter.

Example:

1000 tons of solid waste underwent transformation during the quarter.

City A = 0.2 x 1000 tons = 200 tons

City B = 0.4 x 1000 tons = 400 tons

City C = 0.4 x 1000 tons = 400 tons

(k) If an operator conducts origin surveys of each uncompacted load of solid waste with a volume of 12 cubic yards or less during a one-week survey period each quarter pursuant to section 18811.6(c), then the operator shall calculate the estimated tons of solid waste delivered in these loads from each jurisdiction for the quarter. The calculated tonnage allocations shall be based on the actual origin information reported by haulers during the survey period. The operator shall do the following steps in order.

(1) Obtain information on the jurisdiction(s) of origin for each uncompacted load with a volume of 12 cubic yards or less delivered to the transformation facility on the dates set forth in section 18811.6(c).

Example:

Four uncompacted loads of 12 cubic yards or less delivered during the survey week.

Load 1 = 0.5 ton from City A

Load 2 = 0.5 ton from City B

Load 3 = 0.5 ton from City C

Load 4 = 0.5 ton from City B

(2) Calculate the tons of solid waste delivered in uncompacted loads of 12 cubic yards or less assigned to each jurisdiction during the survey week. The operator shall either add up the tons of solid waste accepted from each jurisdiction, or the amounts of solid waste that underwent transformation from each jurisdiction after adjusting for front-end diversion at the transformation facility.

Example:

City A = 0.5 ton (Load 1)

City B = 1 ton (Load 2 + Load 4)

City C = 0.5 ton (Load 3)

(3) Calculate the percentage of solid waste assigned to each jurisdiction during the survey week by dividing the tons determined in paragraph (2) by the total tons of solid waste delivered in uncompacted loads of 12 cubic yards or less during the survey week.

Example:

2 tons delivered in uncompacted loads of 12 cubic yards or less during the survey week.

City A = 0.5 ton/2 tons = 0.25 (25%)

City B = 1 ton/2 tons = 0.5 (50%)

City C = 0.5 ton/2 tons = 0.25 (25%)

(4) Calculate the number of tons delivered in uncompacted loads of 12 cubic yards or less that underwent transformation from each jurisdiction during the quarter by multiplying the percentages from paragraph (3) with the total tons of solid waste that underwent transformation during the quarter that were delivered in uncompacted loads of 12 cubic yards or less.

Example:

100 tons were delivered in uncompacted loads of 12 cubic yards or less and underwent transformation during the quarter.

City A = 0.25 X 100 tons = 25 tons

City B = 0.5 X 100 tons = 50 tons

City C = 0.25 X 100 tons = 25 tons

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18811.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which an operator must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18811.9. Transformation Facility Disposal Reports: Content, Timing, and Distribution.

(a) An operator shall track the total tons of solid waste accepted by the facility and sent off-site for reuse, recycling, or composting.

(b) An operator shall provide the following quarterly information to the agency in which the facility is located. An operator shall keep copies of the quarterly information and all supporting documentation used to prepare the information pursuant to the record keeping requirements in section 18811.4. An operator shall report, by jurisdiction of origin (including host assigned jurisdiction of origin, if applicable), information on the amounts and types of all solid waste specified in this subsection. The operator shall report:

(1) the facility name and Solid Waste Information System (SWIS) number,

(2) the reporting quarter and year,

(3) the total tons of solid waste accepted at the facility,

(4) the total tons of each type of material from each jurisdiction identified for potential reuse as:

(A) alternative daily cover, and

(B) alternative intermediate cover,

(5) the total tons from each jurisdiction that underwent transformation, and

(c) An operator shall provide quarterly summary information to the agency in which the facility is located. The summary information shall include:

(1) the total tons of solid waste accepted at the facility,

(2) the total tons of solid waste identified for potential reuse, separated as follows:

(A) the total tons of each type of alternative daily cover,

(B) the total tons of each type of alternative intermediate cover, and

(C) the total tons of each type of other beneficial reuse material,

(3) the total tons of other solid waste sent off–site for reuse, recycling, or composting,

(4) the total tons of all solid waste that underwent transformation,

(5) the total tons of untreated ash resulting from the transformation process, and

(6) a brief summary of the methods used to determine the jurisdictions of origin.

(d) The operator shall provide the quarterly information in subsections (b) and (c) to the agency by the due dates in section 18811.10.

(e) Upon request by a jurisdiction, an operator shall provide all quarterly information pertaining to the jurisdiction by the due dates in section 18811.10. In lieu of sending quarterly disposal information directly to a jurisdiction, an operator may electronically submit the information to the Board using a format that would allow the Board to make the information available on its web site. In addition to the amounts reported in subsection (b)(3) through (5), a jurisdiction's request for quarterly information may include:

(1) the total tons of each type of material identified as other potential beneficial reuse material (excluding alternative daily cover and alternative intermediate cover),

(2) the total tons of C&D debris/inert debris that underwent transformation,

(3) the total tons of each type of designated waste that underwent transformation, and

(4) the total tons of disaster waste that underwent transformation.

(f) An operator shall send an annual report on disposal reporting methods to the agency in which the facility is located. An operator shall send the annual report by the due date in section 18811.10. An operator shall keep a copy of the annual report in the facility's records pursuant to section 18811.4. The report shall cover each year beginning on January 1 and ending on December 31 and shall include the following:

(1) the facility name and Solid Waste Information System (SWIS) number,

(2) operator name,

(3) operator mailing address,

(4) operator telephone number,

(5) operator email address, if available,

(6) all volumetric conversion factors used for each vehicle and/or trailer type and/or load type and a description of the method used to determine the conversion factors in compliance with section 18811.2(b)(1),

(7) the frequency of each type of origin survey,

(8) the percentage of the total tons of waste that underwent transformation assigned to each jurisdiction that was based on:

(A) origin information collected during a one–week per quarter survey period as allowed in section 18811.6(b) or (c), if applicable, and

(B) volumetric conversion factors rather than actual weight measurements,

(9) the method(s) of determining jurisdiction of origin, including the questions gatehouse attendants ask haulers,

(10) the method(s) used to verify origin information, if applicable,

(11) any restrictions on which jurisdictions may use the facility,

(12) any differences in transformation facility tipping fees based on jurisdiction of origin,

(13) a listing or description of the computer program(s) or method used to track waste tonnage and origin information,

(14) the method(s) used to track C&D debris/inert debris loads, if applicable,

(15) the designated waste types accepted and method(s) of tracking designated wastes, if applicable,

(16) the method(s) used to track disaster waste loads, if applicable,

(17) the final disposition of ash resulting from the transformation process, including the method of ash diversion, if applicable, and

(18) the days and hours of operation, including all significant variations in the schedule during the reporting year.

(g) If an operator amends disposal reporting information, the operator is only required to provide the amended information to the agency once per quarter (the operator shall still allow access to records in accordance with section 18811.4). An operator is not required to provide amended disposal information for reporting years once the Board has completed the biennial review cycle for those years pursuant to section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.10. Disposal Reporting Due Dates for a Transformation Facility.

(a) An operator of a transformation facility shall send a quarterly report to the agency in which the facility is located as described in sections 18811.9(b) and (c). If requested by a jurisdiction, the operator shall also send a quarterly report to the jurisdiction as set forth in section 18811.9(e). An operator shall send the report by May 31 for the first quarter, August 31 for the second quarter, November 30 for the third quarter, and February 28 for the fourth quarter of the previous year.

(b) An operator of a transformation facility shall send an annual report on disposal reporting methods to the agency in which the facility is located, as described in section 18811.9(f). An operator shall send this annual report by March 15 for the previous year. An operator shall respond to requests for clarification regarding jurisdiction of origin allocations as specified in section 18811.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18811.11. Non–Compliance.

(a) A hauler or operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency.

(c) A hauler or operator may inform the Board if an agency fails to comply with this Article. A hauler or operator shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812. Disposal Reporting Requirements for an Agency.

(a) Sections 18812.1 through 18812.11 establish the requirements for an agency as follows:

(1) Signage for an Agency Section 18812.1

(2) Scales and Weighing Requirements for an Agency Section 18812.2
(3) Training Requirements for an Agency Section 18812.3
(4) Agency Records: Retention, Access, and Investigations Section 18812.4
(5) Identifying Jurisdiction of Origin Section 18812.5
(6) Frequency of Origin Surveys Section 18812.6
(7) Determining Origin of Waste for an Agency Section 18812.7
(8) Applicability of Alternative Reporting Systems Section 18812.8
(9) Agency Disposal Reports: Content, Timing, and Distribution Section 18812.9
(10) Disposal Reporting Due Dates for an Agency Section 18812.10
(11) Non–compliance Section 18812.11

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. Amendment of subsection (a)(4) and NOTE filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 45).
3. Change without regulatory effect adding subsection (f) filed 8–25–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 34).
4. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.1. Signage for an Agency. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.2. Scales and Weighing Requirements for an Agency. (Not applicable)

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.3. Training Requirements for an Agency.

(a) An agency shall provide training on the disposal reporting system to each disposal report preparer and to other employees who must comply with the requirements of this Article. Training for a report preparer shall cover the content of this Article as it applies to the report preparer's job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.4. Agency Records: Retention, Access, and Investigations.

(a) An agency shall prepare disposal reporting records and shall:

(1) Include all information, methods, and calculations required by this Article.

(2) Keep quarterly documentation that verifies jurisdiction of origin allocations reported to the Board and jurisdictions pursuant to sections 18812.9(a), (c) and (d).

(3) Use a reasonable method to gather the information, such as locally required or facility specific reporting forms, electronic systems, or the optional paper or electronic reporting forms developed by the Board.

(4) Maintain all records for three years in a usable format, such as on *electronic media* (computer files) or paper copies.

(5) Allow representatives of involved jurisdictions, haulers, operators, districts, and the Board to inspect the records during normal business hours in a single location within California. Haulers and operators shall only be allowed to inspect records relating to their own operations. An agency is not required to provide records of a jurisdiction's disposal information for reporting years for which the Board has already completed the biennial review cycle for the applicable jurisdiction pursuant to section 41825 of the Public Resources Code.

(A) Upon a request to review records, the agency shall make the records promptly available for inspection. The agency shall respond to the request within ten days, but may indicate that additional time is necessary to make the records available due to time necessary to search for, collect and examine records to respond to the request. In no case shall the inspection be delayed more than an additional 14 days, unless agreed to by the requestor.

(B) If copies of specific records are requested, either in lieu of inspection or after inspection, the agency shall respond to the request for copies within ten days, but may indicate that additional time is necessary to make the copies due to time necessary to search for, collect, and examine records to respond to the request. In no case shall the copies be delayed more than an additional 14 days, unless agreed to by the requestor. The agency may charge a fee to cover the actual cost of copying. In no case shall the fee exceed ten cents per page, unless local public records act requirements establish another rate.

(C) If an agency believes that a records request includes information that has been labeled confidential or proprietary by the entity providing that information as defined in sections 17044 through 17046, the agency shall inform the Board. The Board shall use the procedures set forth in section 17046 to determine which records, or parts of records, may be inspected.

(b) An agency shall respond to requests for clarification regarding their records within ten days. Requests must be specific and clearly stated in writing.

(c) The Board may investigate all information, methods, and calculations pursuant to this Article. If the Board determines that any information is inaccurate, the Board may require corrected information.

(d) If an agency fails to comply with this section, and that failure prevents the Board from accurately determining the agency's level of Source Reduction and Recycling Element implementation, the Board may initiate the process to issue a compliance order as set forth in section 41825 of the Public Resources Code.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) An agency shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, an operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) An agency shall identify waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent an agency from enacting ordinances or other measures to ensure that operators and haulers provide additional jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.6. Frequency of Origin Surveys.

(a) At all permitted solid waste facilities, origin surveys shall be conducted continuously, each day of facility operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a permitted solid waste facility located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14,

September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to subsections [e] and [f]). During the standard survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted solid waste facilities, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to subsections [e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board–approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a facility is located authorizes the facility operator to assign all waste tonnage to that city or county.

(e) If the standard origin survey weeks in subsections (b) and (c) are not representative of disposal activity or facility operation, an agency may request alternative survey weeks that are representative of local conditions. During the alternative survey weeks, every load of solid waste specified in subsections (b) and (c), shall be surveyed to determine jurisdiction of origin. If an agency selects origin survey weeks in addition to the standard survey weeks, the additional weeks shall not require Board staff approval as alternative survey weeks. Continuous origin surveys of every load of solid waste during each day of facility operation includes and exceeds the standard survey week, and shall not require Board staff approval as alternative survey weeks.

(f) Prior to using alternative survey weeks, the agency shall:

(1) Provide at least a 30–day notice of the proposed weeks to, and accept and respond to comments from:

(A) haulers and operators of facilities within the boundaries of the agency,

(B) jurisdictions that dispose of waste within the boundaries of the agency, and

(C) Local Task Force established pursuant to section 18761 of this Division.

(2) Submit the responses to comments received and the list of alternative survey weeks to the Board for review and approval. Within 30 working days from receipt of this material, Board staff shall inform the applicant, in writing, that the information provided is complete and accepted for filing, or that the application is deficient and what specific information is required. Board staff shall approve or disapprove of the alternative survey weeks within 60 working days from the date the agency submits a completed package. The agency may appeal the Board staff determination to the Board.

(3) Notify all haulers and operators of approval by Board staff prior to the first alternative survey week.

(g) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.7. Determining Origin of Waste for an Agency.

(a) Nothing in this Article shall prevent an agency from requiring an operator to collect additional information to document waste origin from a hauler based upon its own authority to impose requirements on that operator.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.8. Applicability of Alternative Reporting Systems.

(a) An agency shall comply with the system of requirements and performance standards set forth in this Article. To implement the performance standards, an agency may require haulers or operators to follow procedures in addition to those set forth in this Article, if necessary to address local conditions.

(b) An agency may set up an alternative reporting system that gathers the required information on the amounts and origins of solid waste, and the amounts and origins of alternative daily cover, alternative intermediate cover, and other beneficial reuse by material type from haulers and operators in a different manner than set forth in sections 18808.7 18808.9, 18809.7, 18809.9, 18810.7, 18810.9, 18811.7 and 18811.9. If a system collects at least the required information, during at least the standard origin survey period set forth in section 18812.6, and the system requires disposal information collected to be reported by the same entities, then the system shall not be considered an alternative system, and shall not require Board staff approval as an alternative system. A system that meets or exceeds all of the minimum requirements using methods specified in this Article, shall not be considered an alternative system, and shall not require Board staff approval as an alternative system. If an agency uses an alternative reporting system, that system shall:

(1) Provide all the information required by this Article.

(2) Provide information as accurate as required by the system in this Article.

(3) Provide landfill disposal information consistent with the number of tons reported to the Board of Equalization that are subject to the fee pursuant to section 48000 of the Public Resources Code and section 45151 of the Revenue and Taxation Code.

(4) Comply with all the provisions of sections 18804, 18808.4, 18808.5, 18808.10, 18808.11, 18809.4, 18809.5, 18809.10, 18809.11, 18810.4, 18810.5, 18810.10, 18810.11, 18811.4, 18811.5, 18811.10, 18811.11, 18812.4, 18812.5, 18812.9, 18812.10, 18812.11, 18813.4, 18813.5, 18813.9, 18813.10, 18813.11, 18814.4, 18814.5, 18814.9, 18814.10, and 18814.11 of this Article.

(c) Prior to using an alternative reporting system, the agency shall:

(1) Provide at least a 30–day notice of the proposed system to, and accept and respond to comments from:

(A) haulers and operators of facilities within the boundaries of the agency,

(B) jurisdictions within the boundaries of the agency,

(C) jurisdictions outside the boundaries of the agency that dispose of waste within the boundaries of the agency, and

(D) the Local Task Force established pursuant to section 18761 of this Division.

(2) Submit a description of how the alternative system meets the minimum requirements and include a copy of the responses to comments received, to the Board for review and approval. Within 30 working days from receipt of this material, Board staff shall inform the applicant, in writing, that the information provided is complete and accepted for filing, or that the application is deficient and what specific information is still required. Board staff shall approve or disapprove of the alternative system within 60 working days from the date the agency submits a completed package. The agency may appeal the Board staff determination to the Board.

(3) Notify all haulers and operators of the approval by Board staff prior to using the alternative system.

(d) If subsequent to approval of an alternative reporting system the Board determines an agency no longer meets the criteria of this section, the Board may rescind the approval.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY
1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.9. Agency Disposal Reports: Content, Timing, and Distribution.

(a) An agency shall use information provided by operators of landfills to determine quarterly totals for the amounts of solid waste specified in this subsection.

(1) For each permitted landfill located within the agency, an agency shall report:

(A) the facility name and Solid Waste Information System (SWIS) number,

(B) the reporting year and quarter,

(C) the total tons of soil accepted by the landfill and used as cover or for other on–site uses,

(D) the total tons of solid waste accepted at the landfill (excluding soil used on–site),

(E) the total tons of solid waste used on–site, separated as follows:

(i) the total tons of each type of alternative daily cover,

(ii) the total tons of each type of alternative intermediate cover, and

(iii) the total tons of each type of other beneficial reuse material,

(F) the total tons of other solid waste accepted at the landfill and sent off–site for reuse, recycling, or composting,

(G) the total tons of solid waste disposed at the landfill,

(H) either:

(i) the estimated in–place density achieved at the landfill in units of pounds of waste per cubic yard of waste and the estimated waste–to–cover ratio used at the landfill, or

(ii) the airspace utilization factor (tons of waste per cubic yard of landfill airspace), and

(This information shall be included in the quarterly report so that the Board may accurately calculate the remaining capacity of the landfill as well as regional and statewide remaining capacity. It is not the intent of this section to subject a landfill to a Notice of Violation should it subsequently be determined that these estimates are unknowingly inaccurate.)

(I) a brief summary of the methods used to determine the jurisdictions of origin.

(2) For each permitted landfill, located within the agency, an agency shall report the total tons of solid waste allocated to each region, city, and unincorporated county in California and to each state, country, and Indian country from which waste was imported. When applicable, an agency shall also separately report the total tons of waste that were host assigned to a jurisdiction. The agency shall report:

(A) the tons of all solid waste accepted at each landfill (excluding soil used as cover or for other on–site uses),

(B) the tons of solid waste reused on–site at the landfill, separated as follows:

(i) the tons of each type of alternative daily cover used during the quarter, and

(ii) the tons of each type alternative intermediate cover used during the quarter, and

(C) the tons of solid waste disposed at each landfill.

(b) Prior to submitting a quarterly report to the Board, an agency shall verify that the tons of disposal reported by a landfill equal the tons of waste subject to the Integrated Waste Management Fee as reported to the Board of Equalization on the landfill's fee return. If a landfill is not required to report tons disposed to the Board of Equalization as described in sections 18810.9(a)(2) and (3), an agency shall verify that the tons accepted at the facility minus the tons diverted equal the tons reported as disposal.

(c) An agency shall use information provided by operators of transformation facilities to determine quarterly totals for the amounts of solid waste specified in this subsection.

(1) For each permitted transformation facility located within the agency, an agency shall report:

(A) the facility name and Solid Waste Information System (SWIS) number,

(B) the reporting year and quarter,

(C) the total tons of all solid waste accepted at each transformation facility,

(D) the total tons of solid waste identified for potential reuse, separated as follows:

(i) the total tons of each type of alternative daily cover,

(ii) the total tons of each type of alternative intermediate cover, and

(iii) the total tons of each type of other beneficial reuse material,

(E) the total tons of solid waste sent off–site for reuse, recycling, or composting,

(F) the total tons of solid waste that underwent transformation,

(G) the total tons of untreated ash resulting from the transformation process, and

(H) a brief summary of the methods used to determine the jurisdictions of origin.

(2) For each permitted transformation facility located within the agency, an agency shall report the total tons of solid waste allocated to each region, city, and unincorporated county in California and to each state, country, and Indian country from which waste was imported. The agency shall report:

(A) the total tons of all solid waste accepted at each transformation facility,

(B) the total tons of each type of material identified for potential reuse as:

(i) alternative daily cover, and

(ii) alternative intermediate cover, and

(C) tons of solid waste that underwent transformation at each facility.

(d) An agency shall use information provided by public contract haulers and station operators to determine quarterly totals for:

(1) tons exported from California from within the agency, and

(2) tons exported from California from within the agency allocated to each region, individual city, or individual unincorporated county. For each tonnage allocation, an agency shall identify the name of the disposal site and the state, country, or Indian country to which the waste was sent.

(e) An agency shall compile this information using an electronic form developed by the Board, the agency's own electronic form that the Board's computer system is capable of converting, or paper forms. In lieu of sending quarterly disposal information directly to a jurisdiction, an agency may electronically submit the information to the Board using a format that would allow the Board to make the information available on its web site. An agency shall send this information to:

(1) each California jurisdiction within the agency,

(2) each California jurisdiction outside the agency that uses a facility within the agency,

(3) any region of which the agency is a member, and

(4) the Board.

(f) If an agency does not dispose of solid waste within its boundaries and does not export waste from California from within the agency, the agency shall submit a quarterly report to the Board stating that no waste was disposed within the agency or exported from California from within the agency.

(g) Each year, an agency shall forward to the Board an annual report on disposal reporting methods from each of the facilities within its boundaries.

(h) An agency shall provide the required information by the due dates in section 18812.10.

(i) If an agency receives amended disposal information from a facility operator or a hauler, the agency shall send amended information to the Board and affected jurisdictions according to the schedule set forth in section 18812.10.

(j) An agency shall keep copies of the information reported pursuant to this section and all supporting documentation used to prepare the information pursuant to the record keeping requirements in section

18812.4. An agency shall also keep a copy of each quarterly station notification received pursuant to section 18809.9(b).

(k) If a hauler or operator does not provide an agency with required information, then the agency shall send written notification to the Board regarding hauler or operator non–compliance as specified in section 18812.11.

NOTE: Authority cited: Sections 40502, 41781.3 and 41821.5, Public Resources Code. Reference: Sections 40508 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.10. Disposal Reporting Due Dates for an Agency.

(a) An agency shall send a quarterly report to the Board and affected local governments, as set forth in section 18812.9. In lieu of sending disposal information directly to a local government, an agency may electronically submit the information to the Board using a format that would allow the Board to make the information available on its web site.

(1) An agency shall send the quarterly report by July 15 for the first quarter, October 15 for the second quarter, January 15 for the third quarter of the previous year, and April 15 for the fourth quarter of the previous year.

(2) If an agency receives amended disposal information from a facility operator or a hauler, the agency shall send the Board and each affected jurisdiction an amended report for each affected quarter of the previous year. In an amended report, the agency shall highlight or otherwise identify changes from the prior version. The agency shall send the amended report between April 15 and May 15 for the previous year. An agency may not submit amended disposal information to the Board after May 15 for the previous year, unless Board staff specifically request amended information from the agency. The agency shall send amended information to the affected jurisdictions as the information becomes available throughout the year. An agency may send the required amended information to jurisdictions at the time of the next quarterly reporting due date. An agency is not required to send amended information more frequently than once a quarter. An agency is not required to provide amended disposal information for reporting years once the Board has completed the biennial review cycle for those years pursuant to section 41825 of the Public Resources Code.

(b) An agency shall forward an annual report on disposal reporting methods from each of the permitted solid waste facilities within its boundaries to the Board. An agency shall forward the reports by April 15 for the previous year. An agency shall respond to requests for clarification regarding jurisdiction of origin allocations as specified in section 18812.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18812.11. Non–Compliance.

(a) A hauler or operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year. The agency shall send written information on specific allegations of non–compliance to the Board no later than 60 working days after receiving information from a hauler or operator. The agency shall also send any additional information it has regarding the allegations of non–compliance in writing.

(b) A hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency. The agency shall forward written information on specific allegations of non–compliance to the Board no later than 60 working days after receiving information from a hauler or operator.

(c) An agency shall inform the Board if a hauler or operator fails to comply with this Article by not providing the agency with information required for the preparation of quarterly disposal reports. The agency shall send written information on specific allegations of non–compliance to the Board by July 15 for the first quarter, October 15 for the second quarter, January 15 for the third quarter of the previous year, and April 15 for the fourth quarter of the previous year.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813. Disposal Reporting Requirements for a Jurisdiction.

(a) Sections 18813.1 through 18813.11 establish the requirements for a jurisdiction as follows:

(1) Signage for a Jurisdiction	Section 18813.1
(2) Scales and Weighing Requirements for a Jurisdiction	Section 18813.2
(3) Training Requirements for a Jurisdiction	Section 18813.3
(4) Jurisdiction Records: Retention, Access, and Investigations	Section 18813.4
(5) Identifying Jurisdiction of Origin	Section 18813.5
(6) Frequency of Origin Surveys	Section 18813.6
(7) Determining Origin of Waste for a Jurisdiction	Section 18813.7
(8) Applicability of Alternative Reporting Systems	Section 18813.8
(9) Jurisdiction Disposal Reports: Content, Timing, and Distribution	Section 18813.9
(10) Disposal Reporting Due Date Information	Section 18813.10
(11) Non–compliance	Section 18813.11

(b) If a jurisdiction operates as a waste hauler, the jurisdiction shall also meet the hauler requirements specified in sections 18808.1 through 18808.11.

(c) If a jurisdiction operates as a station operator, the jurisdiction shall also meet the station requirements specified in sections 18809.1 through 18809.11.

(d) If a jurisdiction operates as a landfill operator, the jurisdiction shall also meet the landfill requirements specified in sections 18810.1 through 18810.11.

(e) If a jurisdiction operates as a transformation facility operator, the jurisdiction shall also meet the transformation facility requirements specified in sections 18811.1 through 18811.11.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 12–29–94; operative 12–29–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 52).
2. New subsections (b)–(c)(4) filed 6–19–95; operative 6–19–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 25).
3. Amendment of subsection (c)(2) filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c)(2) refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).
6. Amendment of subsection (a)(3) and NOTE filed 11–5–97; operative 11–5–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 45).
7. Change without regulatory effect amending subsection (c) and amending NOTE filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

8. Repealer and new section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.1. Signage for a Jurisdiction. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.2. Scales and Weighing Requirements for a Jurisdiction. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.3. Training Requirements for a Jurisdiction.

(a) A jurisdiction shall provide training on the disposal reporting system to each report preparer and to other employees who must comply with the requirements of this Article. Training for a report preparer shall cover the content of this Article as it applies to the report preparer's job duties.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.4. Jurisdiction Records: Retention, Access, and Investigations.

(a) If a jurisdiction operates as a hauler, then the jurisdiction shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18808.4.

(b) If a jurisdiction operates as a station operator, then the jurisdiction shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18809.4.

(c) If a jurisdiction operates as a landfill operator, then the jurisdiction shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18810.4.

(d) If a jurisdiction operates as a transformation facility operator, then the jurisdiction shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18811.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.5. Identifying Jurisdiction of Origin.

(a) When required by this Article:

(1) A jurisdiction that operates as a hauler or operator shall identify a jurisdiction by providing its name and specifying whether it is a city, an unincorporated county, or a region.

(2) If expressly allowed by the region, a jurisdiction that operates as a hauler or operator may identify waste from a region formed pursuant to sections 40970 through 40975 of the Public Resources Code as originating in that region, without specifying the individual cities or unincorporated counties, unless otherwise required by the Board.

(3) A jurisdiction that operates as a hauler or operator shall identify waste imported from outside California by specifying the state, country, or Indian country of origin.

(b) Nothing in this Article shall prevent a jurisdiction from enacting ordinances or other measures to ensure that operators and haulers provide accurate jurisdiction of origin information.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.6. Frequency of Origin Surveys.

(a) At all permitted solid waste facilities, origin surveys shall be conducted continuously, each day of facility operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a permitted solid waste facility located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). During the standard survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted solid waste facilities, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board–approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a facility is located authorizes the facility operator to assign all waste tonnage to that city or county.

(e) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.7. Determining Origin of Waste for a Jurisdiction. (Not applicable)

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which a jurisdiction must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.9. Jurisdiction Disposal Reports: Content, Timing, and Distribution.

(a) A jurisdiction shall use the information provided by agencies and districts pursuant to this Article to determine the tons of solid waste disposed from January 1 to December 31 in each year. A jurisdiction shall use this disposal amount for the purposes of measuring achievement of the 50% goal. This amount shall be the sum of solid waste from the jurisdiction, including:

(1) the tons disposed at each permitted landfill,

(2) the tons that underwent transformation at a permitted solid waste facility in excess of 10% of a jurisdiction's adjusted base–year generation as calculated in section 18797.3, and pursuant to section 41783 of the Public Resources Code,

(3) potential alternative daily cover, alternative intermediate cover, and other beneficial reuse material which is not used in accordance with the conditions set forth in sections 20690, 20700, and 20685 of Title 27 of the California Code of Regulations, unless it is otherwise diverted, and

(4) the tons exported from California, minus any portion of the waste that the jurisdiction proves was diverted.

(b) In its annual report to the Board pursuant to section 41821(f) of the Public Resources Code, a jurisdiction shall report the amounts determined pursuant to this section.

(c) In its annual report to the Board, a jurisdiction may also provide additional information related to the tons of waste disposed in California, including "host assigned" waste, or exported from California for disposal. If the jurisdiction provides additional information, the annual report shall describe how it was obtained.

(d) If a jurisdiction operates as a hauler, the jurisdiction shall also meet the reporting requirements specified in section 18808.9.

(e) If a jurisdiction operates as a station operator, the jurisdiction shall also meet the reporting requirements specified in section 18809.9.

(f) If a jurisdiction operates as a landfill operator, the jurisdiction shall also meet the reporting requirements specified in section 18810.9.

(g) If a jurisdiction operates as a transformation facility operator, the jurisdiction shall also meet the reporting requirements specified in section 18811.9.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41780 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.10. Disposal Reporting Due Date Information.

(a) An agency is required to send a quarterly report to each affected jurisdiction, as set forth in section 18812.9. Haulers, operators, and districts are required to provide quarterly disposal information as set forth in sections 18808.9, 18809.9, 18810.9, 18811.9, and 18814.9. Disposal information is due according to the following tables:

Table 1: Due Dates for Information to Facilities

Quarter	*Information Due from Haulers to Facilities*	*Information Due from Stations to Other Stations*	*Information Due from Stations to Landfills and Transformation Facilities*	*Reports Due from Districts to Facilities*
First: Jan. 1–Mar. 31	Apr. 15	Apr. 30	May 15	See section 18814.10
Second: Apr. 1–Jun. 30	Jul. 15	Jul. 31	Aug. 15	See section 18814.10
Third: Jul. 1–Sep. 30	Oct. 15	Oct. 31	Nov. 15	See section 18814.10
Fourth: Oct. 1–Dec. 31	Jan. 15	Jan. 31	Feb. 15	See section 18814.10

Table 2: Reports to Agencies, the Board, and Jurisdictions

Quarter	*Notifications Due from Stations to Agencies**	*Reports Due from Landfills and Transformation Facilities to Agencies**	*Export Reports Due from Haulers and Stations**	*Reports Due from Districts to Agencies**	*Reports Due from Agencies to the Board and Jurisdictions*
First: Jan. 1–Mar. 31	Jun. 15	Jun. 15	Jun. 15	Jun. 15	Jul. 15
Second: Apr. 1–Jun. 30	Sep. 15	Sep. 15	Sep. 15	Sep. 15	Oct. 15
Third: Jul. 1–Sep. 30	Dec. 15	Dec. 15	Dec. 15	Dec. 15	Jan. 15
Fourth: Oct. 1–Dec. 31	Mar. 15**	Mar. 15**	Mar. 15	Mar. 15	Apr. 15

* Upon request, reports may be sent to jurisdictions or made available to jurisdictions using the Board's electronic filing.
** Station, landfill, and transformation facility operators also submit annual reports on facility methods to agencies on this date.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18813.11. Non–Compliance.

(a) A hauler or operator that is a jurisdiction shall inform the agency if a hauler or operator fails to comply with this Article by not providing the hauler or operator with information required for the preparation of quarterly disposal reports. The hauler or operator shall send information on specific allegations of non–compliance, in writing, to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A hauler or operator that is a jurisdiction may inform the agency of other non–compliance issues concerning a hauler or operator. The hauler or operator shall send written information on specific allegations to the agency.

(c) A jurisdiction may inform the Board if an agency fails to comply with this Article. A jurisdiction shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Section 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18814. Disposal Reporting Requirements for a District.

(a) Sections 18814.1 through 18814.11 establish the requirements for a district as follows.

(1) Signage for a District Section 18814.1
(2) Scales and Weighing Requirements for a District Section 18814.2
(3) Training Requirements for a District Section 18814.3
(4) District Records: Retention, Access, and Investigations Section 18814.4
(5) Identifying Jurisdiction of Origin Section 18814.5
(6) Frequency of Origin Surveys Section 18814.6
(7) Determining Origin of Waste for a District Section 18814.7
(8) Applicability of Alternative Reporting Systems Section 18814.8

(9) District Disposal Reports: Content, Timing, and Distribution Section 18814.9
(10) Disposal Reporting Due Dates for a District Section 18814.10
(11) Non-compliance Section 18814.11

(b) If a district operates as a waste hauler, the district shall also meet the hauler requirements specified in sections 18808.1 through 18808.11.

(c) If a district operates as a station operator, the district shall also meet the station requirements specified in sections 18809.1 through 18809.11.

(d) If a district operates as a landfill operator, the district shall also meet the landfill requirements specified in sections 18810.1 through 18810.11.

(e) If a district operates as a transformation facility operator, the district shall also meet the transformation facility requirements specified in sections 18811.1 through 18811.11.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.1. Signage for a District.

(a) If a district operates as a station operator, the district may also meet the provisions specified in section 18809.1.

(b) If a district operates as a landfill operator, the district may also meet the provisions specified in section 18810.1.

(c) If a district operates as a transformation facility operator, the district may also meet the provisions specified in section 18811.1.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.2. Scales and Weighing Requirements for a District.

(a) If a district operates as a station operator, the district shall also meet the requirements specified in section 18809.2.

(b) If a district operates as a landfill operator, the district shall also meet the requirements specified in section 18810.2.

(c) If a district operates as a transformation facility operator, the district shall also meet the requirements specified in section 18811.2.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.3. Training Requirements for a District

(a) If a district operates as a waste hauler, the district shall also meet the hauler training requirements specified in section 18808.3.

(b) If a district operates as a station operator, the district shall also meet the station training requirements specified in section 18809.3.

(c) If a district operates as a landfill operator, the district shall also meet the landfill training requirements specified in section 18810.3.

(d) If a district operates as a transformation facility operator, the district shall also meet the transformation facility training requirements specified in section 18811.3.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.4. District Records: Retention, Access, and Investigations

(a) If a district operates as a hauler, the district shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18808.4.

(b) If a district operates as a station operator, the district shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18809.4.

(c) If a district operates as a landfill operator, the district shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18810.4.

(d) If a district operates as a transformation facility operator, the district shall prepare and retain disposal reporting records and allow affected entities access to the records as set forth in section 18811.4.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.5. Identifying Jurisdiction of Origin.

(a) If a district operates as hauler, the district shall identify a jurisdiction of origin as set forth in section 18808.5.

(b) If a district operates as station operator, the district shall identify a jurisdiction of origin as set forth in section 18809.5.

(c) If a district operates as landfill operator, the district shall identify a jurisdiction of origin as set forth in section 18810.5.

(d) If a district operates as transformation facility operator, the district shall identify a jurisdiction of origin as set forth in section 18811.5.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.6. Frequency of Origin Surveys.

(a) At all permitted solid waste facilities, origin surveys shall be conducted continuously, each day of facility operation, for every load, except as described in subsections (b), (c), and (d).

(b) An operator of a permitted solid waste facility located in a rural city or county, as defined in sections 40183 and 40184 of the Public Resources Code, may conduct origin surveys as specified in subsection (a) or may conduct origin surveys during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). During the standard survey weeks, every load of solid waste shall be surveyed to determine jurisdiction of origin.

(c) At all permitted solid waste facilities, origin surveys of each uncompacted load of waste with a volume of 12 cubic yards or less may be conducted as specified in subsection (a) or may be conducted during the following standard survey weeks each year: March 8 through March 14, June 8 through June 14, September 8 through September 14, and December 8 through December 14 (unless an agency has received Board approval to use alternative weeks pursuant to sections 18812.6[e] and [f]). Daily origin surveys shall be conducted for all other loads as specified in subsection (a).

(d) Origin surveys are not required if:

(1) a facility is located in a Board-approved region, the region has authorized the operator to assign all waste tonnage to the region, and the Board does not otherwise require the region to assign waste to the individual cities or unincorporated counties of the region, or

(2) a city or county in which a facility is located authorizes the facility operator to assign all waste tonnage to that city or county.

(e) Nothing in this Article shall prevent an operator from collecting additional information as part of its operation. Nothing in this Article shall prevent an agency from requiring an operator to conduct origin surveys more frequently or to collect additional information, based upon its own authority to impose requirements on that operator.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9-21-2005; operative 1-1-2006 (Register 2005, No. 38).

§ 18814.7. Determining Origin of Waste for a District.

(a) If a district operates as a waste hauler, the district shall also meet the requirements specified in section 18808.7.

(b) If a district operates as a station operator, the district shall also meet the requirements specified in section 18809.7.

(c) If a district operates as a landfill operator, the district shall also meet the requirements specified in section 18810.7.

(d) If a district operates as a transformation facility operator, the district shall also meet the requirements specified in section 18811.7.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18814.8. Applicability of Alternative Reporting Systems.

(a) An agency may establish alternative requirements with which a district must comply as set forth in section 18812.8.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18814.9. District Disposal Reports: Content, Timing, and Distribution.

(a) If a district operates as a waste hauler, the district shall also meet the reporting requirements specified in section 18808.9.

(b) If a district operates as a station operator, the district shall also meet the reporting requirements specified in section 18809.9.

(c) If a district operates as a landfill operator, the district shall also meet the reporting requirements specified in section 18810.9.

(d) If a district operates as a transformation facility operator, the district shall also meet the reporting requirements specified in section 18811.9.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18814.10. Disposal Reporting Due Dates for a District.

(a) If a district operates as a waste hauler, the district shall submit disposal reports according to the due dates set forth in section 18808.10.

(b) If a district operates as a station operator, the district shall submit disposal reports according to the due dates set forth in section 18809.10.

(c) If a district operates as a landfill operator, the district shall submit disposal reports according to the due dates set forth in section 18810.10.

(d) If a district operates as a transformation facility operator, the district shall submit disposal reports according to the due dates set forth in section 18811.10.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

§ 18814.11. Non–Compliance.

(a) A district that operates as a waste hauler or facility operator shall inform the agency if a hauler or operator fails to comply with this Article by not providing the district with information required for the preparation of quarterly disposal reports. The district shall send written information on specific allegations of non–compliance to the agency by June 15 for the first quarter, September 15 for the second quarter, December 15 for the third quarter, and March 15 for the fourth quarter of the previous year.

(b) A district that operates as a waste hauler or operator may inform the agency of other non–compliance issues concerning a hauler or operator. The district shall send written information on specific allegations to the agency.

(c) A district that operates as a waste hauler or operator may inform the Board if an agency fails to comply with this Article. A district shall send written information on specific allegations of agency non–compliance to the Board.

(d) Allegations of non–compliance shall be handled in accordance with the process set forth in section 18804.

NOTE: Authority cited: Section 40502, Public Resources Code. Reference: Sections 41821.2 and 41821.5, Public Resources Code.

HISTORY

1. New section filed 9–21–2005; operative 1–1–2006 (Register 2005, No. 38).

Article 9.3. Adjustment Method for Calculating Changes in Waste Generation Tonnage

§ 18827. Scope and Purpose.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. New Article 9.3 (sections 18827–18831) and section filed 1–8–96; operative 1–8–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 2).
2. Renumbering of former article 9.3 (sections 18827–18831) to article 9.1 (sections 18797.0–18797.4) and renumbering of former section 18827 to section 18797.0 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former article 9.3 (sections 18827–18831) to article 9.1 (sections 18797.0–18797.4) and renumbering of former section 18827 to section 18797.0 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18828. Definitions.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. New section filed 1–8–96; operative 1–8–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 2).
2. Renumbering of former section 18828 to section 18797.1 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 18828 to section 18797.1 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18829. Adjustment Factor Sources.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. New section filed 1–8–96; operative 1–8–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 2).
2. Renumbering of former section 18829 to section 18797.2 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 18829 to section 18797.2 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18830. Adjustment Method Calculation.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. New section filed 1–8–96; operative 1–8–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 2).
2. Renumbering of former section 18830 to section 18797.3 filed 6–5–96 as an emergency; operative 6–5–96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–27–96 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 18830 to section 18797.3 refiled 9–25–96 as an emergency; operative 10–3–96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–31–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9–25–96 order transmitted to OAL 11–27–96 and filed 1–13–97 (Register 97, No. 3).

§ 18831. Reporting Requirements.

NOTE: Authority cited: Sections 40502 and 41780.1, Public Resources Code. Reference: Sections 41780.1, 41780.2, 41781 and 41821, Public Resources Code.

HISTORY

1. New section filed 1-8-96; operative 1-8-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 2).
2. Change without regulatory effect moving all forms in title 14, division 7 to new appendix A filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
3. Certificate of Compliance as to 1-18-95 order pertaining to forms CIWMB-60, CIWMB-61 and CIWMB-62 including amendment of "Waste Tire-Hauler Registration Application," "Vehicle Description Sheet" and "Waste Tire Hauler Bond" transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).
4. Renumbering of former section 18831 to section 18797.4 filed 6-5-96 as an emergency; operative 6-5-96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect amending CIWMB Form 430 filed 6-6-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 23).
6. Renumbering of former section 18831 to section 18797.4 refiled 9-25-96 as an emergency; operative 10-3-96 (Register 96, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-31-97 or emergency language will be repealed by operation of law on the following day.
7. Change without regulatory effect moving form CIWMB-90 from section 17363 to Appendix A filed 11-4-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 45).
8. Editorial correction clarifying HISTORIES 4 and 6 (Register 97, No. 3).
9. Certificate of Compliance as to 9-25-96 order transmitted to OAL 11-27-96 and filed 1-13-97 (Register 97, No. 3).
10. Change without regulatory effect amending CIWMB forms 83, 90 and 5000 filed 2-6-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
11. Amendment of Appendix A adding new CIWMB Form 98 filed 9-26-97; operative 9-26-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 39).
12. Amendment of Appendix A adding new CIWMB Form 604 filed 4-8-98; operative 5-8-98 (Register 98, No. 15).
13. Editorial correction removing Forms 100-138 from Appendix A pursuant to 6-18-98 order and updating Appendix A Table of Contents (Register 98, No. 34).
14. Amendment of Appendix A adding new form CIWMB 607 and updating Appendix A Table of Contents filed 3-5-99; operative 3-5-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 11).
15. Change without regulatory effect amending forms CIWMB-57 and CIWMB-58 filed 3-11-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
16. Change without regulatory effect amending form CIWMB 430 filed 9-14-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 38).
17. Amendment of form CIWMB 500 filed 3-31-2000; operative 3-31-2000 (Register 2000, No. 13).
18. Change without regulatory effect amending form CIWMB 430 filed 11-17-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).
19. Change without regulatory effect amending forms CIWMB 57 and 58 filed 11-17-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 46).
20. Change without regulatory effect amending forms CIWMB 57 and 58 filed 2-4-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 6).
21. Change without regulatory effect amending table of contents to appendix A and amending forms CIWMB 60, 61, 62, 100, 101, 102(a), 102(b), 103(a), 103(b), 103(c), 104, 105, 106, 107, 108, 109, 100, 111, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150 filed 6-21-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 25).
22. Editorial correction of forms 107 and 108 within Appendix A (Register 2002, No. 26).
23. Editorial correction of form 106 within Appendix A (Register 2002, No. 27).
24. Amendment of CIWMB Forms 500, 501, 502, 503 and 504 filed 4-1-2003; operative 5-1-2003 (Register 2003, No. 14).
25. Editorial correction updating and adjusting placement of CIWMB Form 60 (Register 2003, No. 22).
26. Change without regulatory effect amending table of contents to appendix A and adopting new CIWMB forms 634 and 635 filed 5-28-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 22).
27. Editorial correction amending table of contents to appendix A and moving the following CIWMB Forms to Title 27, Division 2, Appendix 3: 100, 101, 102(a), 102(b), 103(a), 103(b), 103(c), 104, 105, 106, 107, 108, 109, 110 and 111 (Register 2003, No. 22).
28. New form 643 filed 7-10-2003; operative 8-9-2003 (Register 2003, No. 28).
29. Editorial correction relocating forms CIWMB 173 and CIWMB 180 from section 18450 to section 18831, Appendix A (Register 2005, No. 24).
30. New CIWMB forms 203, 204, 647 and 648 filed 6-13-2005 as an emergency; operative 6-13-2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-11-2005 or emergency language will be repealed by operation of law on the following day.
31. New CIWMB forms 203, 204, 647 and 648 refiled 10-12-2005 as an emergency; operative 10-12-2005 (Register 2005, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-9-2006 or emergency language will be repealed by operation of law on the following day.
32. Repealer of CIWMB form 604 filed 10-18-2005; operative 11-17-2005 (Register 2005, No. 42).
33. New CIWMB forms 203, 204, 647 and 648 refiled 2-9-2006 as an emergency; operative 2-9-2006 (Register 2006, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-9-2006 or emergency language will be repealed by operation of law on the following day.
34. Change without regulatory effect amending CIWMB form 60 filed 4-11-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 15).
35. Certificate of Compliance as to 2-9-2006 order, including new revisions of forms CIWMB 203 and 204, transmitted to OAL 6-6-2006 and filed 7-19-2006 (Register 2006, No. 29).
36. Amendment of Appendix A repealing form CIWMB 303 and adopting forms CIWMB 303a and CIWMB 303b filed 4-13-2007; operative 5-13-2007 (Register 2007, No. 15).
37. Change without regulatory effect amending Appendix A, CIWMB form 1000 filed 10-17-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 42).

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Appendix A

Table of Contents

1. CIWMB 36 State of California Oil Recycling Program Fee Exemption Certificate
2. CIWMB 57 Plastic Trash Bag Manufacturer Certification
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16. CIWMB 146 Certificate of Liability Insurance
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21. CIWMB 173 Retreader Self–Certification
22. CIWMB 180 Retreader Trip Log
23. CIWMB 203 Comprehensive Trip Log and Receipts
24. CIWMB 204 Unregistered Hauler & Comprehensive Trip Log Substitution Form
25. CIWMB 303a Lead Agency Form 303a Household Hazardous Waste Collection Information for Fiscal Year ____ /____
26. CIWMB 303b Non–Lead Agency Form 303b Household Hazardous Waste Collection Information for Fiscal Year ____ /____
27. CIWMB 306 Application Cover Sheet
28. CIWMB 430 Newsprint Consumer Certification
29. CIWMB 500 Waste Tire Facilities Permit Application
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31. CIWMB 502 Waste Tire Facilities Environmental Information
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33. CIWMB 504 Waste Tire Facilities Closure Plan
34. CIWMB 607 Voluntary Residual Percentage reporting Form
35. CIWMB 634 Farm and Ranch Solid Waste Cleanup and Abatement Grant — Application Cover Sheet
36. CIWMB 635 Farm and Ranch Solid Waste Cleanup and Abatement Grant — Site Characterization Form
37. CIWMB 643 Clean Up Plan
38. CIWMB 647 Uniform Waste and Used Tire Manifest
39. CIWMB 648 Uniform Waste and Used Tire Trip Log
40. CIWMB 1000 Notice of Designation of Local Agency
41. CIWMB 5000 Standardized Composting Permit

CIWMB Form Number 36 (rev. 11/94)

State of California
Oil Recycling Program
Fee Exemption Certificate

_____
Name of Purchaser

_____
Address of Purchaser

_____
CIWMB Oil Manufacturer Registration Number

(Indicate "Not Applicable" if the purchaser is not required to have a registration number)

I HEREBY CERTIFY that the oil products described herein which I am purchasing from: _____will be used in the following exempt manner:

( ) the oil will be exported from California

( ) the oil will be used in a vessel operated in interstate or foreign commerce

( ) the oil is purchased in bulk (oil which is in nonpackaged form in containers larger than 55 gallons) and used in:

( ) motor trucks of three or more axles which are more than 10,000 pounds gross vehicle weight (Vehicle Code Section 34500(a), or

( ) truck tractors (Vehicle Code Section 43500(b)).

In the event the lubricating oil purchased is not used as indicated above, it is understood that I will report and pay the appropriate fee for the reported number of such quarts or gallons.

Description of products to be purchased or being purchased (including number of gallons):

_____

_____

For "Qualified" Exemption Certificates, attach purchase order.

Date: _____

Signature of Purchaser or Authorized Agent: _____

Printed Name and Title: _____

STATE OF CALIFORNIA
CIWMB #57 (11/01)

CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD

Plastic Trash Bag Manufacturer Certification

Reporting Period: January 1 through December 31, _____

California law requires you to certify to the Integrated Waste Management Board by March 1 of each year for the plastic trash bags intended for sale in California.

Instructions

1. Please fill in the year for the reporting period in the title block above.
2. Please type or print legibly in ink and return by mail or FAX (916) 319-7142.
3. If you did not manufacture regulated trash bags during the reporting period which were intended for sale in California, mark item 10 and 10a, sign and return the form.
4. If you produce your own Recycled Plastic Postconsumer Material, complete section E.
5. Use N/A for items that do not apply.

Definitions of Terms

APCM (Actual postconsumer material) - weight of postconsumer material used in a feedstock to manufacture trash bags.

Plastic Trash Bag - a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.

Regulated Bag - a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in the state.

RPPCM (Recycled plastic postconsumer material) - a plastic feedstock which is used to manufacture trashbags which contain postconsumer material. RPPCM may contain any amount (1 - 100%) of postconsumer material; however, compliance will be determined based on the APCM content of the trash bag.

Proximate Prior Usage of RPPCM - the collected finished product from which the postconsumer material was derived prior to being processed into RPPCM for use in the regulated bag.

Section A - Manufacturer Information

Please provide your company information below

(1) Company Name		(2) Date	
(3) Contact Person	(3a) E-Mail Address (Optional)	(4) Phone Number ( )	
(5) Mailing Address Of The Company Headquarters	(6) City	(7) State	(8) Zip Code

(9a) All **plastic trash bags** intended for sale in California contained an annual aggregate Actual Postconsumer Material (APCM) equal to at least 10% of the weight of **regulated bags.** TRUE FALSE

(9b) All plastic products intended for sale in California contained an annual aggregate of 30% APCM. TRUE FALSE

(10) I did not sell any regulated trash bags in California during the reporting period TRUE FALSE

(10a) Circle each applicable exemption: 1.) less than 0.70 mil 2.) Medical waste bags 3.) Hazardous waste bags 4.) Non-plastic bags 5.) RPPCM Quality 6.) RPPCM Availability

Section B - Percent of Recycled Plastic Postconsumer Material (RPPCM) Use

Complete either Section B1 or Section B2. You are in compliance if either of the following is met:

a) In Section B1 you showed that APCM used is 10% by weight of regulated bags; or,

b) In Section B2 you showed that 30% of the materials used in all of your plastic products intended for sale in California is APCM.

Section B1- Claiming Compliance Based on Plastic Trash Bags Only

Section B1

(11) Total number of plastic trash bags intended for sale in California during the reporting period	
(12) Total tons of plastic trash bags intended for sale in California during the reporting period.	tons
Calculations for Total Tons of APCM Used	
(13) California Source	
(13a) Tons of RPPCM purchased from California sources for use in the manufacture of plastic trash bags intended for sale in California during the reporting period _____tons	
(13b) Tons of actual postconsumer material (APCM) purchased from California sources _____tons	
Example: (a) 10 tons of 80% postconsumer content resin = 8 tons of APCM (b) 10 tons of 10% postconsumer content resin = 1 tons of APCM (c) Total actual postconsumer material= (a) + (b) = 9 tons of APCM	
(14) Non-California Source	
(14a) Tons of APCM purchased from non-California sources and used to manufacture all plastic trash bags intended for sale in California during the reporting period. _____tons	
(15) Total tons of APCM used in the manufacture of all plastic trash bags intended for sale in California during the reporting period (Line 13b + Line 14a)	tons
(16) Total number of regulated trash bags intended for sale in California during the reporting period.	
(17) Total tons of regulated trash bags intended for sale in California during the reporting period.	tons
(18) Compliance Percentage: APCM used to manufacture all plastic trash bags expressed as percent by weight of regulated bags (Line 15/Line17 x 100)	%

Section B2 - Claiming Compliance Based on All Plastic Products

Section B2

(19) Total tons of materials used to manufacture all plastic products intended for sale in California during the reporting period.	tons
Calculations for Total Tons of APCM Used	
(20) California Source	
(20a) Tons of RPPCM purchased from California sources for use in the manufacture of all plastic products intended for sale in California during the reporting period _____tons	
(20b)Tons of APCM purchased from California sources (See example above in 13b to convert RPPCM to APCM) _____tons	
(21) Non-California Source	
(21a) Tons of APCM purchased from non-California sources and used to manufacture all plastic products intended for sale in California during the reporting period. _____tons	
(22) Total tons of APCM used to manufacture all plastic products intended for sale in California during the reporting period. (Line 20b + Line 21a)	tons
(23) Total tons of APCM used to comply with federal and other California RPPCM requirements (same as Line 27)	tons
(24) Total tons of APCM that can be counted for compliance with this Recycled Content Trash Bag requirement. (Line 22 minus Line 23)	tons
(25) Percent APCM used to manufacture all plastic products. (Line 24/Line19x100)	%

Section C - Other Minimum Content Mandates

Describe any other California or federal government recycled content use mandate(s) with which you are required to comply. Use additional sheets if necessary.

(26a). Mandate:	Tons of APCM used to comply:	tons
(26b) Mandate:	Tons of APCM used to comply	tons
(26c). Mandate:	Tons of APCM used to comply:	tons
(27) Total tons of APCM used to comply with other minimum content mandates		tons

Section D - Manufacturer Production Locations

For each physical address at which you manufactured regulated trash bags, list the number of regulated trash bags and the tons of regulated trash bags shipped. Use additional sheets if necessary.

(28a) Company Name	(29a) Contact Person	(30a) Phone Number		
(31a) Street Address	(32a) City	(33a) State	(34a) Zip Code	
(35a) Tons of regulated bags shipped	(36a) Number of regulated bags shipped			
(28b) Company Name	(29b) Contact Person	(30b) Phone Number		
(31b) Street Address	(32b) City	(33b) State	(34b) Zip Code	
(35b) Tons of regulated bags shipped	(36b) Number of regulated bags shipped			
(28c) Company Name	(29c) Contact Person	(30c) Phone Number		
(31c) Street Address	(32c) City	(33c) State	(34c) Zip Code	
(35c) Tons of regulated bags shipped	(36c) Number of regulated bags shipped			
(28d) Company Name	(29d) Contact Person	(30d) Phone Number		
(31d) Street Address	(32d) City	(35d) State	(34d) Zip Code	
(35d) Tons of regulated bags shipped	(36d) Number of regulated bags shipped			
(28e) Company Name	(29e) Contact Person	(30e) Phone Number ( )		
(31e) Street Address	(32e) City	(33e) State	(34e) Zip Code	
(35e) Tons of regulated bags shipped	(36e) Number of regulated bags shipped			

Section E - Recycled Plastic Postconsumer Material Production Information

Complete this section to list every location at which you produced RPPCM. Use additional sheets if necessary. If you did not produce RPPCM, mark N/A.

(37) Total tons of Recycled Postconsumer Material produced during the reporting period.				Tons
(38a) Company	(39a) Street Address	(40a) City	(41a) State	(42a) Zip Code
(43a) Tons of RPPCM produced at this location Tons	(44a) APCM content of RPPCM Tons	(45a) Phone Number ( )		
(46a) Proximate prior usage of APCM:				

(38b) Company	(39b) Street Address	(40b) City	(41b) State	(42b) Zip Code
(43b) Tons of RPPCM produced at this location Tons	(44b) APCM content of RPPCM Tons	(45b) Phone Number ( )		
(46b) Proximate prior usage of APCM:				
(38c) Company	(39c) Street Address	(40c) City	(41c) State	(42c) Zip Code
(43c) Tons of RPCM produced at this location Tons	(44c) APCM content of RPPCM Tons	(45c) Phone Number ( )		
(46c) Proximate prior usage of APCM:				
(38d) Company	(39d) Street Address	(40d) City	(41d) State	(42d) Zip Code
(43d) Tons of RPCM produced at this location Tons	(44d) APCM content of RPPCM Tons	(45d) Phone Number ( )		
(46d) Proximate prior usage of APCM:				

Section F - Recycled Plastic Postconsumer Material Supplier Information

List every supplier from whom you purchased RPPCM. Use additional sheets if necessary.

(47) Total tons of Recycled Postconsumer Material purchased during the reporting period. Tons

(48a) Company	(49a) Street Address	(50a) City	51a) State	(52a) Zip Code
(53a) Contact Person	(54a) Phone Number	(55a) Tons of RPPCM purchased from supplier listed in (48a) Tons		
(56a) APCM content of the RPPCM %	(57a) Proximate prior usage of the RPPCM.			
(48b) Company	(49b) Street Address	(50b) City	(51b) State	(52b) Zip Code
(53b) Contact Person	(54b) Phone Number	(55b) Tons of RPPCM purchased from supplier listed in (48b) Tons		
(56b) APCM content of the RPCM %	(57b) Proximate prior usage of the RPPCM.			
(48c) Company	(49c) Street Address	(50c) City	(51c) State	(52c) Zip Code
(53c) Contact Person	(54c) Phone Number	(55c) Tons of RPPCM purchased from supplier listed in (48c) Tons		
(56c) APCM content of the RPCM %	(57c) Proximate prior usage of the RPPCM.			

Section G - Recycled Plastic Postconsumer Material Customer Information

Complete this section to list every customer to whom you sold RPPCM. Use additional sheets if necessary. If you did not sell RPPCM, mark N/A.

(58) Total tons of Recycled Plastic Postconsumer Material sold during the reporting period. Tons

(59a) Company	(60a) Street Address	(61a) City	(62a) State	(63a) Zip Code
(64a) Contact Person	(65a) Phone ( )			
(59b) Company	(60b) Street Address	(61b) City	(62b) State	(63b) Zip Code
(64b) Contact Person	(65b) Phone ( )			
(59c) Company	(60c) Street Address	(61c) City	(62c) State	(63c) Zip Code
(64c) Contact Person	(65c) Phone ( )			

Section H - Certification Instructions

Certification: Only the following persons are authorized to sign this form.

* Corporation: By a responsible corporate officer or manager authorized to make management decisions which govern the operation of reporting facility.
* Partnership or sole proprietorship: The general partner or proprietor.
* Government agency: By either the principal executive officer or a designated elected official who is authorized to obligate the entity for purposes of this certification.

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision, that to the best of my knowledge and belief, the information provided is true, accurate, and complete. I am aware that there are significant penalties for submitting false or misleading information in this certification, including the possibility of fine or imprisonment, or both for violations.

Signature Of Individual Authorized To Sign	Title Of Authorized Individual	
Typed Or Printed Name Of Authorized Individual	Date	Phone Number

Return the completed and signed form to:

Program Coordinator
Recycled Content Plastic Trash Bag Program
Integrated Waste Management Board
1001 I Street, 13th Floor
P. O. Box 4025
Sacramento, CA 94812-4025
(916) 341-6500

Certification Control # _____

Official Use Only

Received by: _____ Date: Reviewed by: _____ Date:

Entered by: _____ Date:

STATE OF CALIFORNIA
CIWMB 58 (11/01)

CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD

Plastic Trash Bag Wholesaler Certification

Reporting Period: January 1 through December 31, _____

California law requires you to certify by March 1 of each year for the regulated plastic trash bags sold in California.

Instructions

1. Please type or print legibly in ink and return by mail or FAX to (916) 319-7142. Use "N/A" for items which are not applicable.
2. If you did not sell any trash bags in California during the reporting period, mark item 9, sign and return the form.
3. If all the trash bags you sold in California during the reporting period were non-regulated trash bags, mark item 10 and 11, sign and return the form.

Return form to:

Program Coordinator
Recycled Content Plastic Trash Bag Certification Program
Integrated Waste Management Board
1001 I Street, 13th Floor
P. O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6500

Section A - Wholesaler Information

Please provide your company information below.

(1) Company name		(2) Date	
(3) Contact Person	(3a) E-Mail Address (Optional)	(4) Phone number ( )	
(5) Mailing address of contact person	(6) City	(7) State	(8) ZIP code

(9) I did not sell any trash bags in California during the reporting period. TRUE FALSE

(10) All the trash bags I sold in California were non-regulated trash bags. TRUE FALSE

(11) Circle each type of non-regulated trash bag you sold in California during the reporting period:

1) Less than 0.70 mil 2) Non-plastic bags 3) Medical waste bags
4) Hazardous waste bags 5) Adhesive, heat-affixed strap bags

Section B - Shipping Locations

Please list each physical address from which you shipped regulated trash bags.

(12a) Company name	(13a) Contact person		(14a) Phone ( )
(15a) Street	(16a) City	(17a) State	(18a) ZIP
(19a) Tons of regulated trash bags shipped	(20a) Number of regulated trash bag shipped		
(12b) Company name	(13b) Contact person		(14b) Phone ( )
(15b) Street	(16b) City	(17b) State	(18b) ZIP
(19b) Tons of regulated trash bags shipped	(20b) Number of regulated trash bag shipped		
(12c) Company name	(13c) Contact person		(14c) Phone ( )
(15c) Street	(16c) City	(17c) State	(18c) ZIP
(19c) Tons of regulated trash bags shipped	(20c) Number of regulated trash bag shipped		

Plastic Trash Bag Wholesaler Certification

Section C - Supplier Information

List each "manufacturer or wholesaler" from whom you purchased regulated trash bags.

(21a) Company name	(22a) Contact person		(23a) Phone ( )
(24a) Street	(25a) City	(26a) State	(27a) ZIP
(21b) Company name	(22b) Contact person		(23b) Phone ( )
(24b) Street	(25b) City	(26b) State	(27b) ZIP
(21c) Company name	(22c) Contact person		(23c) Phone ( )
(24c) Street	(25c) City	(26c) State	(27c) ZIP
(21d) Company name	(22d) Contact person		(23d) Phone ( )
(24d) Street	(25d) City	(26d) State	(27d) ZIP
(21e) Company name	(22e) Contact person		(23e) Phone ( )
(24e) Street	(25e) City	(26e) State	(27e) ZIP

Section D - Certification Instructions

Certification: Only the following persons are authorized to sign this form.

* Corporation: By a responsible corporate officer or manager authorized to make management decisions which govern the operation of reporting facility.
* Partnership or sole proprietorship: The general partner or proprietor.
* Government agency: By either the principal executive officer or a designated elected official who is authorized to obligate the entity for purposes of this certification.

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision, that to the best of knowledge and belief, the information provided is true, accurate, and complete. I am aware that there are significant penalties for submitting false or misleading information in this certification, including the possibility of fine or imprisonment, or both for violations.

Signature of individual authorized to sign		Title of authorized individual
Typed or printed name of authorized individual	Date	Phone number

Official Use Only

Received by:_____ Date: Reviewed by:_____ Date:

Entered by:_____ Date:

State of California
CIWMB–60 (3/06)

California Integrated Waste Management Board
P.O. Box 4025 • Sacramento, CA 95812

APPLICANT: This application is a:

New Application	☐	Change in Vehicle Ownership	☐
Renewal	☐	Change in Business Ownership and/or Name	☐
Add/Delete Vehicle	☐	Replacement Decal	☐

CIWMB Use Only

Reviewed By_____

Date Issued_____

Waste Tire Hauler Registration Application

Pursuant to Section 42950 et seq. of the Public Resources Code, a waste tire hauler shall submit the following information on this form in order to obtain a Waste Tire Hauler Registration and approval to transport used or waste tires.

APPLICANT: COMPLETE (TYPE OR PRINT IN INK) ITEM 1 THROUGH 9. IF A SPECIFIC ITEM DOES NOT APPLY TO YOUR COMPANY, ENTER "N/A", FOR NOT APPLICABLE INCOMPLETE OR PHOTOCOPIED FORMS MAY BE REJECTED.

1. Business name of company*: _____.
2. Business Owner:_____ / Phone Number _____
   Social Security Number _____–____–_____**
3. Business Operator (if different from Business Owner): _____/ Phone Number _____
4. Other business names of the company (DBA's): _____
5. Mailing address of company: _____
   City _____ State _____ Zip_____
6. Facility address (if different than No. 5) _____
   City _____ State _____ Zip_____
7. Vehicle Descriptions: Provide information for each vehicle to be approved to haul used or waste tires on page 2.
8. Attach proof of bond. (Form CIWMB–61)

9. Indicate prospective end use facilities (disposal, recycle, storage, etc.). If you need more space, please list on a separate page.

Name	Address	Phone number

** Name of individual, sole proprietorship, co–partnership, Limited Liability Company, corporation, or political subdivision applying for registration.*

** Pursuant to Family Code Section 17520(d), persons applying for issuance or renewal of any license or other authorization to engage in a business, occupation, or profession under any of the laws administered by the CIWMB, must provide their social security numbers to the CIWMB. The CIWMB uses this information to match their names to the names on the list provided by the Department of Child Support Services, and to respond to requests for information made by child support agencies.

I certify under penalty of perjury under the laws of the State of California that the information on this application form is true and correct.

_____ _____
Signature of Authorized Agent Date

_____ _____
Printed Name of Authorized Agent Title of Authorized Agent

No registration application fee is required. Incomplete applications will be returned, and applicant will not be considered registered.

RETURN COMPLETE REGISTRATION APPLICATION TO:

Tire Management–Branch
Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, CA 95812

Business Name (Item 1 from previous page)_____ Registration Number (if known)_____

Vehicle Description Sheet

7. This part must be completed by all applicants for a permit to transport used or waste tires pursuant to Chapter 19, Section 42950 et. seq. of the Public Resources Code and submitted to the California Integrated Waste Management Board. Please attach additional sheets, if necessary.
(Important Notice -The applicant is responsible for the actions of any persons transporting used or waste tires under this registration.)

No	Still In Service	License Number	State	Vehicle Identification Number	Make/Model	Year	Type*	Registered Owner	(For CIWMB Renewal Only) CIWMB Registration No.
1	☐								
2	☐								
3	☐								
4	☐								
5	☐								
6	☐								
7	☐								
8	☐								
9	☐								
10	☐								

* Type of vehicle: Include **Motorized** Vehicles Only (No Trailers)

☐ Please send me a Temporary Certificate For Alternate Vehicles for the upcoming year's renewal. I realize that I will be receiving only one temporary certificate each year and that this certificate is not transferable to any other registration. Additionally, know that I am required to inform the CIWMB upon the use of any alternate vehicle within two (2) calendar days.

State of California
CIWMB–61 (Rev. 2/02)

California Integrated Waste Management Board
1001 "I" Street • P.O. Box 4025 • Sacramento, CA 95812–4025

WASTE TIRE HAULER BOND

BOND NUMBER_____

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, The Undersigned_____
_____, whose
address for service is _____
_____, as Principal, and
_____, a corporation
organized and existing under the laws of the State of _____ and authorized to transact a general surety business in the State of California, whose address for service is_____, as Surety, are held and firmly bound unto the State of California in the sum of TEN THOUSAND DOLLARS ($10,000) lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is required by the provisions of Section 42955 of the Public Resources Code to file or have on file a bond as therein prescribed in the amount of ten thousand dollars ($10,000) and said Principal admits it is so required and

WHEREAS, the above–named Principal, pursuant to California Senate Bill No. 744 (McCorquodale), Chapter 511, Statutes of 1993, an act to amend Section 42889 of, and to add Chapter 19 (commencing with Section 42950) to Part 3 of Division 30 of, the Public Resources Code, relating to tire haulers, is applying to the California Integrated Waste Management Board for a registration to engage in transportation of waste tires as defined in California Statutes of 1993, Chapter 511, Part 3 of Division 30, Chapter 19, Article 1, Section 42950(b), at the following location:

_____

NOW THEREFORE, the conditions of the foregoing obligation are that if the Principal above named shall faithfully comply with all and be subject to all applicable statutes, rules, and waste tire hauler registration conditions of the State of California, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond shall be effective on _____ day of _____, 20 __, and shall run concurrently with the period of the registration granted to the Principal, and shall remain in full force and effect for any renewals thereof, provided, however, that the penalty of said bond shall not be cumulative from year to year, and the total liability of the Surety herein shall not exceed the sum of ten thousand dollars ($10,000), regardless of the number of registration periods for which said bond is in force.

2. The conditions of this bond are as set forth in Chapter 19 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code and any regulations adopted to carry out this chapter or any of the California Integrated Waste Management Board's duties or responsibilities imposed pursuant to this chapter.

State of California
CIWMB–61 (2/02)

California Integrated Waste Management Board
Waste Tire Hauler Bond

3. This bond is executed by the surety to comply with the provisions of Chapter 19 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code and applicable regulations and of Chapter 2, Title 14, Part 2 (commencing with Section 995.010) the Code of Civil Procedure and said bond shall be subject to all of the terms and provisions thereof.

4. Any person claiming against said bond may bring an action on this bond, provided that written claim of such right of action shall be made to a principal or the surety company within two years after the injury.

5. It shall be the responsibility of the Surety to notify the California Integrated Waste Management Board immediately upon the payment of any funds which decreases the liability of the Surety under this bond, or if there is outstanding a claim for which the principal and/or bonding company is liable.

6. This bond may be canceled by the Surety by sending a notice of cancellation by registered or certified mail to the Waste Tire Branch, Special Waste Division, MS 22, P.O. Box 4025, Sacramento, CA 95812–4025. The surety shall at the same time mail or deliver a copy of the notice of cancellation to the Principal. [see CCP Section 996.310 et. seq.] Such cancellation shall take effect 30 days from the date said notice of cancellation is received by the California Integrated Waste Management Board.

IN WITNESS WHEREOF, the above named parties have executed this instrument the ____ day of _____, 20 ___.

Corporate Seal
of Principal
(if corporation)

_____
Principal

By_____
(Title)

ACKNOWLEDGMENT OF SURETY

I certify (or declare) under penalty of perjury under the laws of the State of California that I have executed the foregoing bond under an unrevoked permit of attorney.

Executed in_____ on _____, under the laws of
(City, State) (Date)
the State of California.

Corporate Seal _____
Signature of Attorney–In–Fact for Surety
of Surety

_____
Printed or Typed Name of Attorney–In–Fact for Surety

State of California
CIWMB–62 (2/02)

California Integrated Waste Management Board
1001 "I" Street • P.O. Box 4025 • Sacramento, CA 95812

WASTE TIRE HAULER MANIFEST

INSTRUCTIONS ARE ON REVERSE SIDE OF FORM

PART 1. TO BE COMPLETED BY REPRESENTATIVE OF TIRE DEALER OR WASTE TIRE GENERATOR

Tire Dealer/Generator (include Board of Equalization "Tire Recycling Fee Account Number")
Name & Address

County (Area Code) Telephone Number

Date of Pickup (Month/Day/Year)

Whole Tires in this Shipment OR→	Volume of Tires in this Shipment (cubic yards) OR→	Weight of Tires in This Shipment (Circle One) pounds tons

I certify that the information provided above is true and correct. I certify that Part 2(a) and Part 3(a) were completed at the time of this certification. I am aware that falsification of this manifest may result in civil penalties or administrative civil penalties as described in Public Resources Code Section 42962 (a) and (b). (See reverse side of this form)

Waste Tire Dealer/Generator Representative Signature _____

Date **Printed Name**

PART 2. TO BE COMPLETED BY REPRESENTATIVE OF WASTE TIRE HAULER

(a)

CIWMB Waste Tire Hauler Vehicle Registration Number	Vehicle License Number(including State/Country)

(b)

ADJUSTMENT Waste Tires removed for re-use/retread _____ Remaining waste tires for delivery _____
Name and address of site receiving removed waste tires:

I certify that the information provided above is true and correct. The collector's vehicle may contain several loads from different tire generators; however, each load must be accompanied by its own manifest. I am aware that falsification of this manifest may result in suspension, revocation, or denial of renewal of my Waste Tire Hauler Registration and may result in civil penalties or administrative civil penalties as described in Public Resources Code Section 42962 (a) and (b). (See reverse side of this form)

Waste Tire Hauler Representative Signature _____

Date **Printed Name**

PART 3. TO BE COMPLETED BY REPRESENTATIVES OF WASTE TIRE HAULER AND DESTINATION SITE

(a) TO BE COMPLETED BY WASTE TIRE HAULER. TO BE CORRECTED BY DESTINATION SITE IF DIFFERENT.

Destination Site (include CIWMB Site Number if known)
Name & Address

County (Area Code) Telephone Number

(b) TO BE COMPLETED BY DESTINATION SITE

Date Tires Received (Month/Day/Year)

Are the number of tires received the same as the number of tires shipped in Part I? ☐ Yes ☐ No If NO, please complete the box(es) below:

Whole Tires in this Shipment OR→	Volume of tires in this Shipment (cubic yds) OR→	Weight of tires in this Shipment (Circle one) pounds tons

I certify that the information provided above is true and correct and that I have been authorized by the State of California or a local agency permit to accept waste tires for reuse or disposal. I am aware that falsification of this manifest may result in civil penalties or administrative civil penalties as described in Public Resources Code Section 42962 (a) and (b). (See reverse side of this form)

Waste Tire Destination Representative Signature _____

Date **Printed Name**

Pink - Tire Dealer/Waste Tire Generator; Yellow - Processor/Collection Center/Destination Site; White(original) - Waste Tire Hauler; Blue - Tire Dealer/Tire Generator if requested. A copy of each transaction must be retained by each party for a period of three years.

INSTRUCTIONS FOR COMPLETING WASTE TIRE HAULER MANIFEST (CIWMB–62)

ALL PARTIES MUST KEEP COPIES OF THE MANIFESTS FOR THREE YEARS AND MAKE THEM AVAILABLE TO AUTHORIZED REPRESENTATIVES OF THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD UPON REQUEST.

PART 1. TO BE COMPLETED BY WASTE TIRE DEALER/TIRE GENERATOR REPRESENTATIVE

1. Representative of the tire dealer/waste tire generator completes this section.
2. Complete the name of the company, address, city, state, zip, county, and phone number (Address stamp is acceptable on each copy).
3. Show the number of whole tires and/or processed tires in this shipment.
   For example, a shipment may contain 100 whole tires and/or 100 pounds of processed tires.
4. Certify that the information provided is true and correct in Part 1 and Part 2(a) and Part 3(a), sign, and date.
5. Keep the PINK copy of the manifest for record keeping.
6. May require the hauler to return the BLUE copy of the manifest with the destination site certification signature as proof of delivery to an authorized waste tire site.

PART 2. TO BE COMPLETED BY WASTE TIRE HAULER REPRESENTATIVE

1. Driver representing the registered waste tire hauler completes this section.
2. Complete Section 2(a) PRIOR TO LEAVING THE TIRE GENERATOR'S PREMISES
3. Complete Section 3(a) PRIOR TO LEAVING THE TIRE GENERATOR'S PREMISES (Address stamp is acceptable on each copy).
4. Complete Section 2(b) PRIOR TO ARRIVAL AT THE WASTE TIRE DESTINATION SITE
5. Certify that the information provided is true and correct, sign and date.
6. Keep the WHITE (original) copy of the manifest for record keeping.

PART 3. WASTE TIRE DESTINATION SITE CERTIFICATION

1. Representative of the receiving facility completes this section.
2. Verify Section 3(a) information.
3. Complete Section 3(b).
4. Verify number/quantity of tires received.
5. Certify that the information provided is true and correct, sign and date.
6. Keep the YELLOW copy of the manifest for record keeping.

= = = =

State of California
CIWMB – 81 (rev. 1/95)

California Integrated Waste
Management Board

REGISTRATION PERMIT

Facility/Permit Number (SWIS):

Name of Facility

Name and Address of Enforcement Agency:

Signature of Local Enforcement Agency Approving Officer: Date of Issuance:

Please print or type Name and Title of Approving Officer:

This permit has been issued by the enforcement agency in accordance with Title 14, California Code of Regulations, section 18104. This registration permit incorporates by reference, as terms and conditions of the permit, all minimum standards applicable to it, as set forth in Title 14, Division 7 of the California Code of Regulations. These minimum standards include, but are not limited to the following:

The facility for which this permit has been issued may only be operated in accordance with the description provided in the attached application, which is hereby incorporated by reference.

This permit shall be reviewed at least once every five years from the date of issuance noted above pursuant to Title 14, California Code of Regulations, section 18104.7.

State of California – CIWMB Form 83 (rev. 12/96) California Integrated Waste Management Board

Registration Permit Application

Facility Name:

Address/Location:

Phone Number:

Facility Operator:	Land Owner:
Mailing Address	Mailing Address:
Address Where Process May be Served	Address Where Process May be Served:
Phone Number:	Phone Number:

Facility Information:

Section Authorizing Eligibility:

Volume and Type of Waste/Material(s) Handled:

Site Capacity: _____ Cubic Yards or Tons
Peak Loading: _____ Cubic Yards or Tons/Day
Annual Loading: _____ Cubic Yards or Tons

Days and Hours of Operation:

Facility Size: _____ Area
Operating Area: _____ Area

Traffic:
Incoming Waste Material: _____ Vehicles Per Day
Outgoing Waste Material: _____ Vehicles Per Day

One of the following Statements Must be Checked:

[ ] The facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code 50000; and the facility is consistent with the city or county General Plan.

[ ] The facility is identified in either the countywide siting element, the nondisposal facility element, or in the source reduction and recycling element for the jurisdictions in which it is located; or that the facility is not required to be identified in any of these elements pursuant to section 500001 of the Public Resources Code.

I hereby acknowledge that I have read this application, and certify under penalty of perjury that the information provided is true and accurate. In operating the facility, I agree to comply with the conditions of the permit, and with federal, state, and local enactments:

Signature of Land Owner: _____ Date: _____

Signature of Operator: _____ Date: _____

This application must be accompanied by a ☐ General Description ☐ Site Plan, and ☐ Location Map.

Enforcement Agency Name and Address:	FOR ENFORCEMENT AGENCY USE ONLY Date received: Date approved: Date rejected: Filing Fee: SWIS #:

Instructions for Completing Registration Application:

Fill out this application form completely and accurately. After the Enforcement Agency has review(ed) the application, it will determine whether it meets the requirements of section 18104.1. If the Enforcement Agency finds that the application is complete and correct, a copy of this application and a permit will be returned to you. If the application is not found to be complete and correct it will not be accepted for filing. For additional information on the procedure used for processing this application refer to Title 14 of the California Code of Regulations, Section 181094 et. seq.

Facility Name: The legal name of the facility.

Facility Address/Location: The address of the facility and the a description of the location if different.

Facility Operator/Land Owner: Provide both the mailing addresses and the location/address where process may be served.

Section Authorizing Eligibility:

You must determine the appropriate Section in Chapters 3 or 3.1 of Division 7 of Title 14 of the California Code of Regulations that authorizes eligibility. After determining the appropriate section list it on the application.

Site Capacity: Total capacity of material that can be stored at the site any one time.

Peak Loading: Is the largest projected waste/material quantity to be received by an operation on any day of operation.

Annual Loading: Is the maximum amount of waste/material to be handled by an operation annually.

Days and hours of Operation: The days and hours that the facility is in operation.

Facility Size: The total acreage of the site.

Operating area: The total acreage that is used for all operations.

Traffic: State the maximum number of vehicles that will enter and haul incoming material or remove material on a daily basis.

The operator is required to supply conformance finding information. Whichever one of the two statements above is appropriate to your operation must be checked. To help you in making this determination, you can contact the Enforcement Agency, Local Task Force, or other solid waste planning agency in your city or county.

The application must include a site map and a location map. The site map should include, but not be limited to, operations areas and their relationships to property boundaries, adjacent land uses, proposed drainage systems, any excavation areas, and any other portions of the site dedicated to a specific use. The location map should show the general location of the operation at a scale size minimally equivalent to 1:24,000 USGS topographical quadrangle.

This application must be signed, under penalty of perjury, by both the land owner and the operator.

Nonhazardous Petroleum Contaminated Soil Regulatory Requirements
December 13, 1995

State of California CIWMB FORM 90 (rev. 12/96)	California Integrated Waste Management Board
STANDARDIZED CONTAMINATED SOIL SOLID WASTE FACILITIES PERMIT	
1. Facility/Permit Number (SWIS):	
2. Facility Name:	Address/Location:
3. Enforcement Agency:	Address:
4. Signature of Enforcement Agency Approving Officer: 5. Please Print or Type Name and Title of Approving Officer:	6. Date Signed:
7. Date Received by CIWMB:	
8. Signature of CIWMB Approving Officer: 9. Please Print or Type Name and Title of Approving Officer:	10. Date Signed:
11. Date of Permit Issuance:	12. Permit Review Due Date:
The facility for which this permit has been issued shall only be operated in accordance with the description provided in the application pursuant to Section 18105.1 and Report of Contaminated Soil Disposal Site Information pursuant to Section 18224.	
13. Legal Description of Facility: (description may be attached)	

14. Findings:

a. This permit is consistent with standards adopted by the California Integrated Waste Management Board, pursuant to Public Resources Code Section 44010.

b. An environmental determination has been filed with the State Clearing House (# _____) for all facilities that are not exempt from CEQA and documents pursuant to Public Resources Code Section 21081.6.

c. The following authorized agent _____ has made the determination that the facility is consistent with the applicable general plan, as required by Public Resources Code, Section 50000.5(a).

d. The operation of this facility is consistent with the [ ] County Solid Waste Management Plan (50000), or the [ ] County Integrated Waste Management Plan (50001).

e. The design of the proposed facility or the design and operation of an existing facility, as appropriate, is in compliance with State Minimum Standards for Contaminated Soil Operations and Facilities Regulatory Requirements, Title 14, Division 7, Chapter 3, Article 5.6 of the California Code of Regulations.

15. In addition to this permit, the facility may have one or more of the following permits or restrictions on its operations. Persons seeking information regarding these items should contact the appropriate regulatory agency.

CIWMB Report for Contaminated Soil Disposal Site Information
State Water Resources Control Board/Regional Water Quality Control Board Waste Discharge Requirements or Waiver
National Pollutant Discharge Elimination System (Stormwater) Permit
Fire Protection District Findings
Mitigation and Monitoring Measures (pursuant to the California Environmental Quality Act)
Conditional Use Permit
California Environmental Quality Act Environmental Impact Report or Negative Declaration
Air Pollution Permits and Variances
Coastal Commission Restrictions

16. Terms and Conditions:

a. The operator shall comply with applicable state minimum standards set forth in Title 14, Division 7, Chapter 3, Article 5.6 of the California Code of Regulations.

b. The operator shall comply with all mitigation and monitoring measures developed in accordance with a certified environmental document filed pursuant to Public Resources Code Section 21081.6.

c. The operator shall maintain a copy of this standardized permit at the facility or at a location agreed upon by enforcement agency and board personnel, to be available at all times to facility, enforcement agency, and board personnel.

d. The operator shall maintain and make available for inspection by the enforcement agency and board all correspondence and reports provided to other regulatory agencies that have jurisdiction over the facility.

e. The design capacity of ____ tons or cubic–yards per day of contained soil being disposed of shall not be exceeded.

f. Additional clarifying information concerning the design and operation of the contaminated soil facility shall be furnished upon written request of the enforcement agency, or the board.

g. Unless specifically permitted or allowed under Title 14, Division 7, Chapter 3, Article 5.6 of the California Code of Regulations, the facility shall not accept the following materials:

(1) Designated wastes as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations
(2) Hot Ashes/Burning materials
(3) Medical wastes as defined in Section 25023.2 of the Health & Safety Code
(4) Hazardous Wastes as defined in Section 25117 of the Health & Safety Code
(5) Liquid Wastes as defined in Title 23, Chapter 15, Section 2601 of the California Code of Regulations)

h. Discharge of wastes off–site are prohibited.

i. The facility, if located outside of a city, shall be maintained in compliance with the flammable clearance provisions, pursuant to Public Resources Code Section 44151.

State of California CIWMB FORM 98 (new 7/96)	California Integrated Waste Management Board
STANDARDIZED NONHAZARDOUS ASH SOLID WASTE FACILITY PERMIT	
1. Facility/Permit Number (SWIS):	
2. Facility Name and Address/Location:	3. Operator Name and Mailing Address:
4. Owner Name and Mailing Address:	5. Enforcement Agency and Address:
6. Signature of Enforcement Agency Approving Officer: 7. Please Print or Type Name and Title of Approving Officer:	8. Date Signed:
9. Date Received by CIWMB: 10. CIWMB Concurrence Date:	
11. Signature of CIWMB Approving Officer: 12. Please Print or Type Name and Title of Approving Officer:	13. Date Signed:
14. Date of Permit Issuance:	15. Permit Review Due Date:
The facility for which this permit has been issued shall only be operated in accordance with the description provided in the application pursuant to Section 18105.1 and Report of Nonhazardous Ash Disposal Site Information pursuant to Section 18226. (Applicants may use the Standardized Permit Application CIWMB 92).	
16. Legal Description of Facility: (description may be attached)	

17. Findings:

a. This permit is consistent with standards adopted by the California Integrated Waste Management Board, pursuant to Public Resources Code Section 44010.

b. [ ] A CEQA exemption (state the type, and identify section of exemption, or N/A), _____, or [ ] a (state type of environment document, date, and SCH#) has been filed with the State Clearinghouse and adopted or certified. Where mitigation measures have been identified, a Mitigation Reporting or Monitoring Program has been adopted as part of the project pursuant to Public Resources Code Section 21081.6.

c. The following authorized agent _____ has made the determination that the facility is consistent with the applicable general plan, as required by Public Resources Code, Section 50000.5(a).

d. The operation of this facility is consistent with the [ ] County Solid Waste Management Plan (50000), or the [ ] County Integrated Waste Management Plan (50001).

e. The design of the proposed facility or the design and operation of an existing facility, as appropriate, is in compliance with State Minimum Standards for Nonhazardous Ash Operations and Facility Regulatory Requirements, Title 14, Division 7, Chapter 3, Article 5.8 of the California Code of Regulations.

f. Public Resources Code Section 44009 has been complied with.

18. In addition to this permit, the facility may have one or more of the following permits or restrictions on its operations. Persons seeking information regarding these items should contact the appropriate regulatory agency.

Report of Nonhazardous Ash Disposal Site Information
State Water Resources Control Board/Regional Water Quality Control Board Waste
Discharge Requirements or Waiver
National Pollutant Discharge Elimination System (Stormwater) Permit
Fire Protection District Findings
Mitigation and Monitoring Measures (pursuant to the California Environmental Quality Act)
Conditional Use Permit/Land Use Permit
California Environmental Quality Act Environmental Impact Report or Negative Declaration
Air Pollution Permits and Variances
Coastal Commission Restrictions

Other Permits may also apply

19. Terms and Conditions:

a. The operator shall comply with applicable state minimum standards set forth in Title 14, Division 7, Chapter 3, Article 5.8 of the California Code of Regulations.

b. The operator shall comply with all applicable mitigation and monitoring measures that are to be implemented with the enforcement agency.

c. The operator shall maintain a copy of this standardized permit at the facility or at a location agreed upon by enforcement agency, to be available at all times to facility, enforcement agency, and CIWMB personnel.

d. The operator shall maintain and make available for inspection by the enforcement agency and CIWMB all correspondence and reports provided to other regulatory agencies that have jurisdiction over the facility.

e. The design capacity of _____ tons or cubic–yards (circle one) per day of nonhazardous ash being disposed of shall not be exceeded.

f. The facility has a total operating area of _____ acres.

g. The maximum quantity of nonhazardous ash that can be received per any operating day is ___ tons or cubic yards (circle one).

h. The days and hours of operation shall be_____. For facilities with continuous operations, indicate the start of the operating day for purpose of calculating amount of nonhazardous ash received per day.

i. Additional clarifying information concerning the design and operation of the nonhazardous ash facility shall be furnished upon written request of the enforcement agency or the CIWMB.

j. Unless specifically permitted or allowed under Title 14, Division 7, Chapter 3, Article 5.8 of the California Code of Regulations, the facility shall only accept nonhazardous ash.

k. Migration of wastes, leachate, or dust off–site are prohibited.

l. The facility, if located outside of a city, shall be maintained in compliance with the flammable clearance provisions, pursuant to Public Resources Code Section 44151.

State of California California Integrated Waste Management Board

TRUST AGREEMENT

Trust Account Number: _____

This Agreement is entered into as of _____ by and between:

GRANTOR	TRUSTEE
Operator Name:	Trustee Name:
Address: Phone Number:	Address: Phone Number:
☐ Corporation ☐ Association ☐ Partnership ☐ Proprietorship In the State of _____	☐ Incorporated in the State of _____ ☐ A National Bank

TERMS OF AGREEMENT

WHEREAS, the California Integrated Waste Management Board has established regulations applicable to the Grantor in Title 14, California Code of Regulations (CCR), Division 7, Chapter 6, Article 9, requiring that an operator of a major waste tire facility shall provide assurance that funds will be available when needed for closure activities of the major waste tire facility, and

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the major waste tire facility(ies) identified herein, and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW THEREFORE, the Grantor and Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means State of California, Integrated Waste Management Board or its designee.

Section 2. Identification of Major Waste Tire Facilities and Cost Estimates. This Agreement pertains to the major waste tire facility(ies), cost estimates, and determination of primary or excess coverage identified on attached Schedule A [for each facility identified in Schedule A, list the facility information system number, name, address, and amount of current closure cost estimate (indicate closure amounts separately for each facility), or portions thereof for which financial assurance is demonstrated by this Agreement and whether the coverage is primary or excess coverage].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of the Beneficiary. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the

[The next page is 806.209.]

property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Beneficiary.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the Beneficiary shall direct, in writing, to provide for the payment of the costs of closure of the major waste tire facility(ies) covered by this Agreement. The Trustee shall pay the Grantor or other persons as specified by the Beneficiary from the Fund for expenditures for closure activities in such amounts as the Beneficiary specifies in writing. Upon refund, such funds shall not constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee may invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the potential beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other operator or owner of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, Title 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government.

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, Title 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Beneficiary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Beneficiary, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instruction to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests,

and instructions by the Beneficiary to the Trustee shall be in writing, signed by the Beneficiary designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Beneficiary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Beneficiary, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor, and Beneficiary, by certified mail, within 10 days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, Trustee, and the Beneficiary, or by the Trustee and the Beneficiary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Beneficiary, or by the Trustee and the Beneficiary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The Beneficiary will agree to termination of the trust when the operator substitutes alternate financial assurance as specified in 14 CCR, Section 18479 or is released as specified in 14 CCR, Section 18482.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Beneficiary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act in
conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of his or her knowledge, and is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, Section 18474.

Signature of Grantor:	Title:
Typed or Printed Name of Person Signing:	Seal:
Attest: Title	
Signature of Trustee:	Title:
Typed or Printed Name of Person Signing:	Seal:
Attest: Title	

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, Section 18474 in order to verify adequate financial assurance of major waste tire facilities. Completion of the form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

EXHIBIT A

TRUST AGREEMENT BY AND BETWEEN _____

AND THE _____

As provided for in Section 14 of the Trust Agreement, the persons, other than the officials of the Board or its designees identified in Section 14 of the Trust Agreement, who, until this Exhibit A is amended, shall have the authority to make orders, requests, and instructions to the Trustee are:

Officials of the Grantor.

Officials of the Grantor who have authority to give instructions are:

Name: _____

Title: _____

Any orders, requests or instructions by the Grantor to the Trustee, pursuant to the foregoing Agreement, may be signed by any one or more of the following persons:

Name: _____

Title: _____

TRUST AGREEMENT/DEPOSITORY TRUST

SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimate(s) for the following major waste tire facility(ies):

Facility Information Number	Name of Facility	Address of Facility	Cost Estimates For Which Financial Assurance is Being Demonstrated by This Agreement
			Closure Cost Estimates _____ _____ _____ Total: _____

The cost estimates listed here were last adjusted on _____.
Date

SCHEDULE B

The fund is established initially as consisting of the following:

$ _____ , _____

(Spell out dollar amount)

as evidenced by _____

(Name of institution drawn on)

dated __/__/__.

I hereby certify that funds have been received and deposited.

Authorized Signature:	Title:
Typed or Printed Name of Person Signing: Phone Number of Person Signing:	Address:

DEPOSITORY TRUST AGREEMENT (ONLY)

SCHEDULE B

List of Property Comprising Trust Fund

None at time of the trust establishment. Funding of this Depository Trust Agreement is contingent upon drafts against that primary,

_____ number _____ and issued by

(Surety Bond or Letter of Credit)

the _____ on _____

(Issuing Institution) (Date)

in accordance with the terms of that _____

(Surety Bond or Letter of Credit)

State of California California Integrated Waste Management Board

PERFORMANCE BOND

Principal Name (Operator):			
Address for Service:			
Type of Organization: ☐ Joint Venture ☐ Individual ☐ Partnership ☐ Corporation			State of Incorporation:
Bond Number:	Date Executed:	Effective Date:	Total Penal Sum of Bond:
Corporation:			Total Penal Sum:
Surety Name:			
Surety's Address for Service:			
Surety's Phone Number:			

MAJOR WASTE TIRE FACILITIES COVERED

(Enter closure amounts separately and whether primary or excess coverage. All amounts must total penal amount.) If additional space needed, add attachment.

Name of Major Waste Tire Facility	Address	Major Waste Tire Facility Information Number	Closure Amount
			Total

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the California Integrated Waste Management Board (Board), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum. This bond is executed by the Surety(ies) to comply with the provisions of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, and of Chapter 2 (Section 995.010 et seq.) Part 2 of the Code of Civil Procedure and said bond shall be subject to all the terms and provisions thereof except to the extent that such terms and provisions are inconsistent with or contradicted by statute.

WHEREAS said Principal is required, pursuant to 14 CCR, 18420, to have a permit in order to operate each major waste tire facility identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, as a condition of the permit, pursuant to 14 CCR, 18470 and

WHEREAS said Principal shall establish a depository trust fund as may be required pursuant to 14 CCR, 18475 when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each major waste tire facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.;

OR, if the Principal shall provide alternate financial assurance as applicable, within 60 days after the date notice of cancellation is received by the Principal and the Board or its designee from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Board or its designee that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements; or place the closure amount guaranteed for the major waste tire facility into the depository trust fund, established by the Principal, or if the Principal fails to establish a depository trust fund, established by the Surety(ies), as directed by the Board or its designee.

Upon notification by the Board or its designee that the Principal has failed to provide alternate financial assurance as required, during the 60 days following receipt by the Principal and the Board or its designee of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the major waste tire facility(ies) into the depository trust fund as directed by the Board or its designee.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Board or its designee, provided, however, that cancellation shall not take effect until 120 days after the date of receipt of the notice of cancellation by the Principal and the Board or its designee, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization from the Board or its designee for termination of the bond.

The following paragraph is an optional rider that may be included, but is not required.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without written permission from the Board or its designee.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed

their seals on the date set forth above.

The parties below certify that this document conforms with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, section 18475.

Principal Signature:	Typed or Printed Name of Person Signing:
Title:	Date:

Corporate Seal:

Corporate Surety(ies) Name:	Address For Service:

I certify (or declare) under penalty of perjury, under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney.

Executed in _____

on _____
Date

Corporate Seal:	Notarized Signature of Attorney-in-Fact
	Typed or Printed Name of Attorney-in-Fact

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, section 18475 in order to verify adequate financial assurance of major waste tire facilities. Completion of the form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency (EPA), State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California California Integrated Waste Management Board

FINANCIAL GUARANTEE BOND

Principal Name (Operator):

Address for service:

Type of Organization: ☐ Joint Venture ☐ Individual ☐ Partnership ☐ Corporation	State of Incorporation:

Bond Number:	Date Executed:	Effective Date:	Total Penal Sum of Bond:

Corporation:	Total Penal Sum:

Surety Name:

Surety's Address for Service:

Surety's Phone Number:

MAJOR WASTE TIRE FACILITIES COVERED

(Enter closure amounts separately and whether primary or excess coverage. All amounts must total penal amount.) If additional space needed, add attachment.

Name of Major Waste Tire Facility	Address	Major Waste Tire Facility Information Number	Closure Amount
			Total

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto are firmly bound to the California Integrated Waste Management Board (Board), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum. This bond is executed by the Surety(ies) to comply with the provisions of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, and of Chapter 2 (Section 995.010 et seq.) Part 2 of the Code of Civil Procedure and said bond shall be subject to all the terms and provisions thereof except to the extent that such terms and provisions are inconsistent with or contradicted by statute.

WHEREAS said Principal is required, pursuant to 14 CCR, 18420, to have a permit in order to operate each major waste tire facility identified above, and

WHEREAS said Principal is required to provide financial assurance for closure, as a condition of the permit, pursuant to 14 CCR, 18470 and

WHEREAS said Principal shall establish a depository trust fund as may be required pursuant to 14 CCR 18475 when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each major waste tire facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide alternate financial assurance as applicable, within 60 days after the date notice of cancellation is received by the Principal and the Board or its designee from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Board or its designee that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place the funds in the amount guaranteed for the major waste tire facility into the depository trust fund, established by the Principal, or if the Principal fails to establish a depository trust fund, established by the Surety(ies), as directed by the Board or its designee.

Upon notification by the Board or its designee that the Principal has failed to provide alternate financial assurance as required, during the 60 days following receipt by the Principal and the Board or its designee of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the major waste tire facility(ies) into the depository trust fund as directed by the Board or its designee.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Board or its designee, provided, however, that cancellation shall not take effect until the 120 days after the date of receipt of the notice of cancellation by the Principal and the Board or its designee, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization from the Board or its designee for termination of the bond.

The following paragraph is an optional rider that may be included, but is not required.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without written permission from the Board or its designee.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed

their seals on the date set forth above.

The parties below certify that this document conforms with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, section 18475.

Principal Signature:	Typed or Printed Name of Person Signing:
Title:	Date:
Corporate Seal:	

Corporate Surety(ies) Name:	Address For Service:

I certify (or declare) under penalty of perjury, under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney.

Executed in _____

on _____
Date

Corporate Seal:	Notarized Signature of Attorney-in-Fact
	Typed or Printed Name of Attorney-in-Fact

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, section 18475 in order to verify adequate financial assurance of major waste tire facilities. Completion of the form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency (EPA), State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California California Integrated Waste Management Board

IRREVOCABLE LETTER OF CREDIT
FOR CLOSURE COSTS
The Letter of Credit as specified in Title 14, California Code of Regulations shall preferably be on Bank Safety Paper and shall be worded as follows:

[Month, Day, Year]

Letter of Credit No._____

Executive Director
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, CA 95812-4025

Attention:

Dear Sir or Madam:

We hereby establish our Irrevocable Letter of Credit in your favor, at the request and for the account of

_____(Operator's name)_____(Address)_____ in the aggregate amount

$___(Spell out amount in United States dollars)___, available upon presentation by you of:

(1) Your sight draft(s) on us bearing reference to this Letter of Credit No._____;

(2) Your signed and dated statement reading as follows:

"We certify that the amount of our draft drawn under ____(Name of issuing institution) Letter of Credit No._____ is payable pursuant to regulations issued under authority of the California Solid Waste Management and Resources Recovery Act; and

Partial drawings are permitted.

Each draft must be marked "Drawn under _____(Name of issuing institution)

Letter of Credit No._____ dated _____."

Each draft must also be accompanied by the original of this Letter of Credit upon which we may endorse our payment.

We hereby agree with you that each draft drawn and presented to us at our above office in ___(City)___, (State)_____ in compliance with the terms of the Letter of Credit shall be duly honored upon presentation to us, and we shall deposit the amount of the draft directly in to the depository trust fund of ___(Operator)___ in accordance with your instructions. We also hereby agree to establish a depository trust fund in accordance with your instructions if the operator fails to establish a depository trust fund when required to do so under Title 14, California Code of Regulations, Chapter 6, Article 9, section 18476.

CIWMB 143 (12/01) Page 1 of 2

Special instructions.

This Letter of Credit is valid until [Month, Day, Year] and shall thereafter be automatically renewed for a one-year period upon such date and upon each successive anniversary of such date, unless at least one hundred twenty (120) days prior to such expiration or each successive anniversary of such date we notify you, the operator, in writing by certified mail that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any unused portion of the credit shall be available upon presentation to us of your clean sight draft on or before the then current expiration date.

Indicate whether this coverage is primary or excess coverage.

This credit is subject to (The most recent edition of the Uniform Customs and Practices for Documentary Credits, Published by the International Chamber of Commerce, or "The Uniform Commercial Code.")

[Signature(s) of Official(s) of Issuing Institution]

[Title(s) of Official(s) of Issuing Institution]

[Address of official(s) of Issuing Institution]

[Phone Number of official(s) of Issuing Institution]

[Date Official(s) of Issuing Institution Signs]

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9 section 18476 in order to verify adequate financial assurance of major waste tire facilities. Submittal of the information requested in this form is mandatory. The consequence of not providing this information is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025 (916) 341-6000.

ENTERPRISE FUND FOR FINANCIAL ASSURANCE

Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9, specifies standards for five financial mechanisms. Section 18478 sets the standards for the use of an enterprise fund by public major waste tire facility operators. This mechanism was included by the Board in recognition of the fact that public agencies often make arrangements within their governmental structures that offer satisfactory financial assurance. For an enterprise fund to provide proper financial protection however, several conditions must be met.

To provide security over time and to ensure that the funds are available in a timely manner, Section 18478 requires that the money from the enterprise fund that is dedicated to closure activities be deposited into a mechanism that offers protection "equivalent to" a trust fund. The specifications for this subsidiary mechanism are contained in sections 18478(d)(1 - 6). If the mechanism is not a trust fund with a financial institution as specified in Section 18474, the funds should be held by a regulated public financial agency that is not directly connected with, nor is responsible for the operation of the subject major waste tire facility or operations of the county or city.

DOCUMENTATION

To demonstrate to the Board that an enterprise fund satisfies the regulations, several pieces of documentation must be prepared and submitted by an operator:

1. To indicate that the governing body accepts the obligations and requirements of the regulations, a copy of the formally adopted resolution directing that the enterprise fund be established must be provided. If an enterprise fund already exists, a resolution directing that it be modified to satisfy the regulations must be provided. The resolution must state that the governing board or council accepts the requirements of the regulations, i.e. Sections 18478 and 18474, and directs that the closure account be established.

2. To demonstrate that the appropriate depository mechanism within the enterprise fund has actually been established, a letter from the trustee must be submitted. This is a letter to the Board, typically from a county/city treasurer or auditor/controller, stating that the depository mechanism has been created and reiterating his/her intention to comply with the conditions set forth in Sections 18478(d)(1-6). These are the provisions that make this instrument a viable assurance mechanism.

3. The enterprise fund shall be established and worded as specified by using form CIWMB 144 (03/92). This form contains the proper language required for using this financial assurance mechanism. The wording, however, may be modified on a case-by-case basis to accommodate special circumstances, as approved by the Board or its designee. Additionally, the information requested in brackets [ ] will vary.

To ensure that financial assurance requirements do not unnecessarily delay Board action on permits, it is advisable to submit appropriate documentation at least two months in advance of the date that Board action is to be taken. This will allow sufficient time for errors and omissions to be corrected or details of peculiar cases to be discussed at the staff level. The advance submittal of draft documentation to the Board's staff for comment is also encouraged.

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 9 section 18478 in order to verify adequate financial assurance of major waste tire facilities. Submittal of the information requested in this form is mandatory. The consequence of not providing this information is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

RESOLUTION

FINANCIAL ASSURANCE FOR CLOSURE OF THE [NAME OF TIRE FACILITY]

WHEREAS, Public Resources Code Section 42820 and Sections of Title 14 of the California Code of Regulations (Regulations), Chapter 6, Article 9, require operators of major waste tire facilities demonstrate the availability of financial resources to conduct closure activities; and

WHEREAS, Sections 18478 of the Regulations specify an enterprise fund and related financial assurance mechanism as an acceptable mechanism to demonstrate financial responsibility for financing closure activities of a major waste tire facility;

NOW, THEREFORE, BE IT RESOLVED by the [Board of Supervisors/City Council] of [Name of County/City] that:

1. The [Title of Authorized Person] of [Name of County/City] is authorized and directed to establish and maintain an enterprise fund for the [Facility Name] ("the Tire Facility") and to deposit in the enterprise fund all revenue derived from the operations of the Tire Facility.

2. The [Title of Authorized Person] is further directed to withdraw funds from the enterprise fund, for deposit into the financial assurance mechanism hereafter provided, sufficient to meet the requirements of Sections 18478 of the Regulations on a timely basis. Payments into the financial assurance mechanism shall be made in accordance with the requirements of section 18474 (c) of the Regulations.

3. The funds referred to in Section 2 above shall be deposited and retained by the Treasurer of [Name of County/City] in a separate fund to be known as the [Name of Facility] Closure Fund established by the [Title of Authorized Person] of [Name of County/City] and shall be used to pay only for closure activities of the Tire Facility.

4. The Closure Fund shall be and remain inviolate against all other claims, including claims of this [County/City] or its [Board of Supervisors/City Council] or the creditors thereof, it being the intent of this Resolution that the mechanism established hereby will provide equivalent protection to a trust fund in ensuring that the assured amounts of funds will be available in a timely manner for closure activities of the Tire Facility.

5. Disbursement of funds for closure activities shall be in accordance with Sections 18474(e) of these regulations.

6. The Closure Fund shall be invested by the [Title of Authorized Person] in the manner provided by law.

7. In the event the California Integrated Waste Management Board determines that this [County/City] has failed to perform closure activities as required by law, the Board may direct the [Title of Authorized Person] to pay to the [Title of Authorized Person] from the Closure Fund such amounts as are necessary to insure sufficient closure activities, who then shall be obligated to use such funds for closure activities in accordance with the directive of the California Integrated Waste Management Board.

8. The [Title of Authorized Person] is directed to produce an annual report for transmittal to the California Integrated Waste Management Board, containing the following information concerning the [Name of Facility]:

(a) As appropriate, a revised closure cost estimate, prepared as specified by Section 18472 of the Regulations.

(b) Status, including current balance of the [Name of Facility] Closure Fund.

(c) The number of current members of the [Board of Supervisors/City Council] of this [County/City] who voted affirmatively when this resolution was adopted or last reaffirmed.

9. **[Optional]** The [Board of Supervisors/City Council] of [Name of County/City] shall reconsider this resolution whenever the number of then current members of this Board who voted affirmatively when this Resolution was adopted or last reaffirmed is less than a majority of the total members.

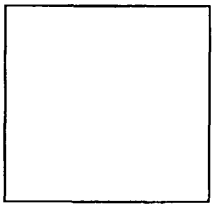
* * * * *

([Name of County/City])

I, [Name of Authorized Person], [Title of Authorized Person] of the [Board of Supervisors/City Council] of the [County/City] of [Name of County/City], do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the [Board of Supervisors/City Council] at a regular meeting held on [Month, Day, Year], and duly entered in the minutes of said [County/City].

[Name of Authorized Person]
[Title of Authorized Person]
[Phone Number of Authorized Person]

SEAL



[Name of County/City]
[Name of Office Authorized to Hold Funds]

[Month, Day, Year]

California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, California 95812-4025

To Whom It May Concern:

Verification of Establishment of Funds

Please be advised that the following separate funds have been established pursuant to Resolution(s) No.[_____] adopted on [Month, Day, Year] by the [Board of Supervisors/City Council] of [Name of County/City]:

1. [Name of Facility] Closure Fund

It is understood that these funds shall be used by the [Title of Authorized Person] of [Name of County/City] only for closure activities at the identified major waste tire facility, and are intended to meet applicable requirements of State law. These monies are being held in these funds to preserve their integrity and inviolacy. I will perform my duties and responsibilities in accordance with the terms and conditions of Title 14, Division 7, Chapter 6, Article 9.

This letter shall serve as verification that the [Title of Authorized Person] of [Name of County/City] has established these funds in accordance with the resolutions referenced above. The [Title of Authorized Person] is an officer of the [County/City] of [Name of County/City].

Sincerely,

[Name of Authorized Person]
[Title of Authorized Person]

[Name of County/City]
[Department Responsible for Waste Tire Facilities]

[Month, Day, Year]

California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, California 95812-4025

To Whom It May Concern:

Certification for the Establishment of a Financial Mechanism for the Closure of the [Name of Facility]

The [Department Responsible for Waste Tire Facilities] is herein submitting the subject certification for the [Name of Facility], Major Waste Tire Facility Permit No. [NN-XX-NNNN]. The [Department Responsible for Waste Tire Facilities] is the operator of the [Name of Facility] and retains responsibility for closure activities. ON [Month, Day, Year] [Department Responsible for Waste Tire Facilities] submitted to the Board initial cost estimates for closure activities and accompanying certification for this major waste tire facility. Submittal of the enclosed certification of a financial mechanism for closure of the [Name of Facility] completes all required documentation for this major waste tire facility related to financial assurances for closure activities.

On [Date], the Board of Supervisors of [Name of County/City], the governing administrative authority for the [Department Responsible for Waste Tire Facilities], established the [Name of Facility] Closure Fund, an enterprise fund to be used exclusively for closure activities of the subject major waste tire facility. Annual deposits as required by Title 14, Division 7, Chapter 6, Article 9, will be made to the Closure Fund so that an amount equal to the current closure cost estimate for the [Name of Facility] is available at the time of closure. Official documentation of the establishment of this Closure Fund is forthcoming.

If you have any questions concerning the attached certification or related matters, please contact me.

Sincerely,

[Name of Authorized Person]
[Department Responsible for Waste Tire Facilities]

State of California California Integrated Waste Management Board

TRUST AGREEMENT

Trust Account Number: _____

This Agreement is entered into as of _____ by and between:

GRANTOR	TRUSTEE
Operator Name:	Trustee Name:
Address:	Address: Phone Number:
☐ Corporation ☐ Association ☐ Partnership ☐ Proprietorship In the State of _____	☐ Incorporated in the State of _____ ☐ A National Bank

TERMS OF AGREEMENT

WHEREAS, the California Integrated Waste Management Board has established regulations applicable to the Grantor in Title 14, California Code of Regulations (CCR), Division 7, Chapter 6, Article 10, requiring that an operator of a major waste tire facility shall demonstrate financial responsibility for bodily injury and/or property damage to third parties caused by accidental occurrences arising from the operation of the facility, and

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the major waste tire facility or group of major waste tire facilities identified herein, and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW THEREFORE, the Grantor and Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Beneficiary" means third party claimants who satisfy the requirements either of Section 4(a) or 4(b) of this Agreement.

(d) The term "California Integrated Waste Management Board" or "the Board" means the California Integrated Waste Management Board or its designee.

Section 2. Identification of Facilities and Coverage Amounts. This Agreement pertains to the major waste tire facilities, coverage amounts, and determination of primary or excess coverage identified on attached Schedule A [for each facility included in Schedule A, list the major waste tire facility information system number, name, address, amount of per occurrence coverage and annual aggregate coverage or portions thereof if more than one instrument affords combined coverage as demonstrated by this Agreement, and whether the coverage is primary coverage or excess coverage].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of any and all third parties injured or damaged by accidental occurrences arising from operation of the facility(ies) covered by this trust agreement, in the amounts of _____ per occurrence and _____ annual aggregate per facility for accidental occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) "Bodily injury" or "property damage" expected or intended from the standpoint or the Grantor. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

(b) "Bodily injury" or "property damage" for which the Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the Grantor would have in the absence of the contract or agreement.

(c) Any obligation of the Grantor under a workers compensation, disability benefits or unemployment compensation law or any similar law.

(d) "Bodily injury" to:

(1) An employee of the Grantor arising out of and in the course of employment by the Grantor; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

(1) Whether the Grantor may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

(e) "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to the Grantor. Use includes operation and loading and unloading. This exclusion does not apply to:

(1) Parking an "auto" on, or on the ways next to, premises the Grantor owns or rents, provided the "auto" is not owned by or rented or loaned to the Grantor.

(2) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph (F)2. or (F)3. of the definition of "mobile equipment" (14 CCR, Section 18486).

(f) "Property damage" to:

(1) Property the Grantor owns, rents, or occupies;

(2) Premises the Grantor sells, gives away or abandons, if the "property damage" arises out or any part of those premises;

(3) Property loaned to the Grantor;

(4) Personal property in the Grantor's care, custody or control;

(5) That particular part of real property on which the Grantor or any contractors or subcontractors working directly or indirectly on the Grantor's behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because the Grantor's work was incorrectly performed on it.

The Fund is established initially as consisting of the property (cash or securities), which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Board.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only on receipt of one of the following documents:

(a) Certification from the Grantor and the Beneficiary that the liability claim should be paid. The certification must be worded as follows:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [Grantor] and [Name and Address of Beneficiary(ies)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrence arising from the operation of [Grantor's] major waste tire facility should be paid in the amount of $_____.

_____	_____	__/__/__
Grantor's Signature	Notary	Date
_____	_____	__/__/__
Claimant(s) Signature	Notary	Date

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee may invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the potential beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other operator or owner of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, Title 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government.

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940 as amended, Title 15 U.S.C. 80a-1 et seq., including one that may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and the Board a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Board shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If, for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Board, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instruction to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Board, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, within one year of such payment, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for operating liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall, within 10 working days after the anniversary date of the payment, provide a written notice of nonpayment to the Board.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the Grantor, Trustee, and the Board, or by the Trustee and the Board if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Board, or by the Trustee and the Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The Board will agree to termination of the trust when the operator substitutes alternate financial assurance as specified in 14 CCR, 18488 or is released as specified in 14 CCR, 18499.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act in conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of his or her knowledge, and is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18489.

Signature of Grantor:	Title:
Typed or Printed Name of Person Signing:	Seal:
Attest: Title	
Signature of Trustee:	Title:
Typed or Printed Name of Person Signing:	Seal:
Attest: Title	

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18489 in order to verify adequate financial assurance of major waste tire facilities. Completion of the form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025 (916) 341-6000.

(SAMPLE I)
EXHIBIT A

TRUST AGREEMENT BY AND BETWEEN _____

AND THE _____

As provided in Section 14 of the Trust Agreement, the persons, other than the officials of the Board identified in Section 14 of the Trust Agreement, who, until this Exhibit A is amended, shall have the authority to make orders, requests, and instructions to the Trustee are:

The following:

Officials of the Grantor who have authority to give instructions:

Name: _____

Title: _____

(SAMPLE II)
EXHIBIT A

Any orders, requests or instructions by the Grantor to the Trustee, pursuant to the foregoing Agreement, may be signed by any one or more of the following persons:

Name: _____

Title: _____

TRUST AGREEMENT

SCHEDULE A

This Agreement demonstrates financial assurance for the following liability coverage amounts for the following facility(ies):

Major Waste Tire Facility Information Number	Name of Facility	Address of Facility	Coverage Amounts for Which Financial Assurance is Being Demonstrated by This Agreement
			Per Occurrence: _____ _____ _____ Annual Aggregate: _____

SCHEDULE B

The fund is established initially as consisting of the following:

$_____ , _____ as evidenced by _____
(Spell out dollar amount) (Name of institution drawn on)

Check Number _____ , dated __/__/__ .

I hereby certify that funds have been received and deposited.

Authorized Signature:	Title:
Typed or Printed Name of Person Signing:	Address: Phone Number of Person Signing:

CIWMB 145 (12/01)

State of California California Integrated Waste Management Board

CERTIFICATE OF LIABILITY INSURANCE

(If additional space needed, add attachment.)

Name of Insurer:	Address: Phone Number:	CA Insurer License Number: Or NAIC Number:
Name of Insured:	Address: Phone Number:	

Major Waste Tire Facilities Covered:(Enter Information for Each Facility) LIMITS OF LIABILITY

Name:	Address:	Major Waste Tire Facility Information Number	Per Occurrence:*	Annual Aggregate:*
			Total:	Total:
Policy Number:			Effective Date:	

*Excluding legal defense costs and deductibles

INSURER CERTIFICATION:

1. The insurer hereby certifies that it has issued liability insurance covering personal injury and/or property damage to the insured listed above in connection with the insured's obligation to demonstrate financial responsibility under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10. The coverage applies to the above-listed facility(ies) for accidental occurrences arising from the operation of the facility(ies).

2. Indicate whether this coverage is ☐ primary or ☐ excess coverage.

3. The limits of liability are the amounts stated above for "per occurrence" and "annual aggregate", exclusive of legal defense costs. If an excess coverage insurance policy is being provided, complete the following sentence:

[$_____per occurrence and $_____annual aggregate in excess of the underlying limits of $_____per occurrence and $_____annual aggregate.]

4. The insurance coverage is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with sections (a) through (e) of this paragraph shall be amended to conform with sections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this certification applies.

(b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the insured for any such payment made by the insurer.

(c) Upon request by the Board or its designee, the insurer agrees to furnish to the Board or its designee the original policy and all endorsements.

(d) Cancellation or any other termination of this certificate, whether by the insurer or the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is sent by certified mail, and received by the Board or its designee, as evidenced by the return receipts. (See exception, section (e))

(e) Cancellation due to non-payment of premiums is effective only upon written notice and only after the expiration of 10 days after the date on which the operator and the Board or its designee have received the notice of termination, as evidenced by return receipts.

The party below certifies and signs under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of his or her knowledge, that this document is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18491, and that the insurer is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an ☐ admitted carrier or ☐ eligible excess or surplus lines insurer.

Signature of Individual Authorized to Sign on Behalf of Insurer:	Title of Authorized Person:
Typed or Printed Name of Person Signing:	Date:

Address of Person Signing:

Phone Number of Person Signing:

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18491, in order to verify adequate financial assurance of major waste tire facilities. Completion of this form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California California Integrated Waste Management Board

LIABILITY INSURANCE ENDORSEMENT

(If additional space needed, add attachment.)

Name of Insurer:	Address: Phone Number:	CA Insurer License Number: Or NAIC Number:
Name of Insured:	Address:	

Major Waste Tire Facilities Covered: (Enter Information for Each Facility) LIMITS OF LIABILITY

Name:	Address:	Major Waste Tire Facility Information Number:	Per Occurrence:*	Annual Aggregate:*
			Total:	Total:
Policy Number:			Effective Date:	

*Excluding legal defense costs and deductibles

INSURER CERTIFICATION:

1. By endorsement, the insurer certifies that this policy provides liability insurance covering personal injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10. The coverage applies to the above-listed facility(ies) for accidental occurrences arising from the operation of the facility(ies).

2. Indicate whether the coverage is ☐ primary or ☐ excess coverage.

3. The limits of liability are the amounts stated above for "per occurrence" and "annual aggregate", exclusive of legal defense costs. If the endorsement is for an excess coverage insurance policy, complete the following sentence:

[$_____per occurrence and $_____annual aggregate in excess of the underlying limits of $_____per occurrence and $_____annual aggregate.]

4. The insurance coverage is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with sections (a) through (e) of this paragraph shall be amended to conform with sections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the insured for any such payment made by the insurer.

(c) Upon request by the Board or its designee, the insurer agrees to furnish to the Board or its designee the original policy and all endorsements.

(d) Cancellation or any other termination of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is sent by certified mail, and received by the Board or its designee, as evidenced by the return receipts. (See exception, section (e))

(e) Cancellation due to non-payment of premiums is effective only upon written notice and only after the expiration of 10 days after the date on which the operator and the Board or its designee have received the notice of termination, as evidenced by return receipts.

The party below certifies and signs under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of his or her knowledge, that this document is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18491, and that the insurer is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an ☐ admitted carrier or ☐ excess or surplus lines insurer.

Signature of Individual Authorized to Sign on Behalf of Insurer:	Title of Authorized Person:
Typed or Printed Name of Person Signing:	Date:

Address of Person Signing:

Phone Number of Person Signing:

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18491, in order to verify adequate financial assurance of major waste tire facilities. Completion of this form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California California Integrated Waste Management Board

CERTIFICATE OF SELF-INSURANCE AND RISK MANAGEMENT

(If additional space needed, add attachment.)

Operator:	Address:
Risk Manager:	Address (if different from above):

Major Waste Tire Facilities Covered: (Enter Information for Each Facility) LIMITS OF LIABILITY

Name:	Address:	Major Waste Tire Facility Information Number	Per Occurrence:*	Annual Aggregate:*
			Total:	Total:
Policy Number:			Effective Date:	

*Excluding legal defense costs and deductibles

INSURER CERTIFICATION:

1. The operator and risk manager named above hereby certify that the facility(ies) listed above are self-insured for third party bodily injury and property damage in connection with the operator's obligation to demonstrate financial responsibility under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10. The coverage applies to the above-listed facility(ies) for accidental occurrences arising from the operation of the facility(ies).

2. Indicate whether this coverage is ☐ primary or ☐ excess coverage.

3. The limits of liability are the amounts stated above for "per occurrence" and "annual aggregate", exclusive of legal defense costs. If an excess coverage insurance policy is being provided, complete the following sentence:

[$_____per occurrence and $_____annual aggregate in excess of the underlying limits of $_____per occurrence and $_____annual aggregate.]

4. Upon request by the Board or its designee, the operator agrees to furnish to the Board or its designee any documents pertinent to this coverage.

5. Termination of this coverage, will be effective only upon written notice, sent by certified mail, and only after the expiration of 60 days after a copy of such written notice is received by the Board or its designee, as evidenced by the return receipt.

The parties below certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of his or her knowledge, and that this document is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18492.

Signature of Individual Authorized to Sign on Behalf of the Operator:	Title:
Typed or Printed Name of Person Signing: Phone Number of Person Signing:	Date:
Risk Manager's Signature:	Title:
Typed or Printed Name of Person Signing: Phone Number of Person Signing:	Date:

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18492, in order to verify adequate financial assurance of major waste tire facilities. Completion of this form is mandatory. The consequence of not completing the form is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California California Integrated Waste Management Board

INSTRUCTIONS FOR THE
Letter From the Chief Financial Officer
Financial Means Test for Liability

(a) A letter from the chief financial officer, as specified in Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18493 shall be on corporate letterhead stationery. It shall contain the original signature of the chief financial officer and shall be worded as indicated on the attached form CIWMB 149 (12/01)

(b) The letter from the chief financial officer shall be accompanied by the following items, as specified in Section 18493:

(1) A copy of an independent certified public accountant's report on examination of the operator's financial statements for the latest completed fiscal year with a copy of the firm's financial statements for the latest completed fiscal year;

(2) A special report from the independent certified public accountant to the operator stating that:

(A) The independent certified public accountant has compared the data in the letter from the chief financial officer with the amounts in the year-end financial statements for the latest completed fiscal year; and

(B) In connection with that procedure, no matters came to the independent certified public accountant's attention that caused him or her to believe that the specified data should be adjusted;

(3) A completed financial test using either Alternative I or II;

(4) A copy of the form 10-K most recently filed with the Securities and Exchange Commission, if the operator is required to make such a filing; and

(5) If applicable, the corporate guarantee with wording as specified in Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18494.

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18493, in order to verify adequate financial assurance for major waste tire facilities. Submittal of the information requested is mandatory. The consequence of not providing this information is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

Executive Director
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025,
Sacramento, California 95812-4025

I am the chief financial officer of (Operator's or Guarantor's Name and Address). This letter is in support of the financial means test and/or corporate guarantee to demonstrate financial assurance for liability coverage, as specified in Title 14, California Code of Regulations (CCR), Division 7, Chapter 6, Article 10, Section 18493.

[Complete the following paragraphs regarding major waste tire facilities, including those California and out-of-state facilities for which a similar test is being used to demonstrate financial assurances, including but not limited to, closure and/or postclosure maintenance costs of hazardous waste treatment or storage facilities or solid waste landfills, or liability coverage requirements for these same or similar facilities, and associated coverage amounts. If no facilities belong in a particular paragraph, write "None" in the space indicated. For each facility, include its facility information number, name, address, and the amounts of coverage provided. Identify each coverage amount separately as to whether it is for "closure" or "postclosure maintenance" costs or "per occurrence" or "annual aggregate" liability coverage for accidental occurrences, and whether it is primary or excess coverage.]

1. This firm is the operator or owner of the following facilities for which the firm is demonstrating financial assurance for liability coverage through the financial means test as specified in 14 CCR, 18493 (list annual aggregate being provided for each facility):

2. This firm guarantees, through the corporate guarantee for liability coverage as specified in 14 CCR, 18494, the liability coverage of the following facilities (list annual aggregate being provided for each facility):

3. This firm is the operator or owner of the following facilities for which the firm is demonstrating financial assurance for liability coverage through any similar financial means test, including but not limited to, California, federal, or out-of-state hazardous waste treatment storage or disposal facilities, or solid waste landfills, or any other similar financial means tests:

4. This firm is the operator or owner of the following facilities for which the firm is demonstrating financial assurance for closure and/or postclosure maintenance through any similar financial means test, including but not limited to, California, federal, or out-of-state hazardous waste treatment storage or disposal facilities, or solid waste landfills, or any other similar financial means tests for any similar financial responsibility requirements of any operations of this firm:

5. This firm guarantees, through any similar financial means tests as specified in the laws of California, the federal government or any other state, the liability coverage requirements of any hazardous waste treatment, storage or disposal facilities, or any solid waste landfills, or any other similar guarantees for any similar financial responsibility requirements of any operations of this firm (list annual aggregate being provided for each facility):

6. This firm guarantees, through the corporate guarantee for postclosure maintenance specified in 14 CCR, Section 18291 for solid waste landfills, or through any similar financial means tests as specified in the laws of California, the federal government or any other state, the closure and/or postclosure maintenance costs of any hazardous waste treatment, storage or disposal facilities, or any solid waste landfills, or any other similar guarantees for any similar financial assurance requirements of any operations of this firm:

7. This firm is/is not required to file a form 10-K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

8. The fiscal year of this firm ends on (Month/Day).

9. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended _____.

10. This coverage is primary/excess coverage.

ALTERNATIVE I
(Omit if using Alternative II)

1.	Amount of annual aggregate liability coverage to be demonstrated	$ _____
2.	Sum of other liability coverage and/or closure cost estimates and/or postclosure maintenance cost estimates (from paragraphs 3, 4, 5, and/or 6)	$ _____
3.	Sum of lines 1 and 2	$ _____
*4.	Total liabilities (if any portion of the postclosure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 5 and 6)	$ _____
*5.	Tangible net worth	$ _____
*6.	Net Worth	$ _____
*7.	Current assets	$ _____
*8.	Current liabilities	$ _____
9.	Net working capital (line 7 minus line 8)	$ _____
10.	The sum of net income plus depreciation, depletion, and amortization	$ _____
*11.	Total assets in the United States (required only if less than 90 percent of assets are located in the United States)	$ _____
12.	Is line 5 at least $10 million?	☐ Yes ☐ No
13.	Is line 5 at least 6 times line 3?	☐ Yes ☐ No
14.	Is line 9 at least 6 times line 3?	☐ Yes ☐ No
15.	Are at least 90 percent of assets located in the United States?	☐ Yes ☐ No
16.	Is line 11 at least 6 times line 3?	☐ Yes ☐ No

If any closure and/or postclosure maintenance costs are included from line 2., two of the following three ratios must be met:

17.	Is line 4 divided by line 6 less than 2.0?	☐ Yes ☐ No
18.	Is line 10 divided by line 4 greater than 0.1?	☐ Yes ☐ No
19.	Is line 7 divided by line 8 greater than 1.5?	☐ Yes ☐ No

I hereby certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of my knowledge, and that this letter is worded as specified by the Board and is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18493.

Signature _____ Typed or Printed Name _____

Title _____ Phone Number _____ Date _____

Corporate Seal

ALTERNATIVE II
(Omit if using Alternative I)

1.	Amount of annual aggregate liability coverage to be demonstrated	$ _____
2.	Sum of other liability coverage and/or closure cost estimates and/or postclosure maintenance cost estimates (from paragraphs 3, 4, 5 and/or 6)	$ _____
3.	Sum of lines 1 and 2	$ _____
*4.	Current bond rating of most recent issuance of this firm and name of rating service	$ _____
*5.	Date of issuance of bond	$ _____
*6.	Date of maturity of bond	$ _____
*7.	Tangible net worth (if any portion of the postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line)	$ _____
*8.	Total assets in the United States (required only if less than 90 percent of assets are located in the United States)	$ _____
9.	Is line 7 at least $10 million?	☐ Yes ☐ No
10.	Is line 7 at least 6 times line 3?	☐ Yes ☐ No
*11.	Are at least 90 percent of assets located in the United States?	☐ Yes ☐ No
12.	Is line 8 at least 6 times line 3?	☐ Yes ☐ No

I hereby certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of my knowledge, and that this letter is worded as specified by the Board and is being executed in accordance with the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18493.

_____ _____
Signature Typed or Printed Name

_____ _____ _____
Title Phone Number Date

Corporate Seal

State of California California Integrated Waste Management Board

CORPORATE GUARANTEE

Shall be on corporate letterhead stationery. It shall also contain original signature of Guarantor and shall be worded as indicated in form CIWMB 150.

Executive Director
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, California 95812-4025

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____ "; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, the name and address of the registered agent in the State of the principal place of business] herein referred to as a guarantor. This guarantee is made on behalf of [Operator] [Business address] to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by accidental occurrences arising from operation of the major waste tire facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial means test criteria of Title 14, California Code of Regulations (CCR), Division 7, Chapter 6, Article 10, Section 18493 and agrees to comply with the reporting requirements for guarantors as specified in 14 CCR, Sections 18493 and 18494.

2. Guarantor is a [parent corporation] of [Name of Operator]; is a [firm whose parent corporation], [Name of Corporate Parent], is also the parent corporation of [Name of Operator]; or engages in a substantial business relationship with [Name of Operator] and is issuing this guarantee as an act incident to that business relationship.

3. [Operator] operates the following facilities in the United States which are covered by this guarantee or a similar guarantee: [List for all facilities (including but not limited to hazardous waste and solid waste disposal facilities): facility information number, name and address; and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent for service in California.]

This corporate guarantee satisfies the Board's operating liability coverage requirements as identified in 14 CCR, Section 18487 for accidental occurrences for the facilities named above for the required amount of coverage excluding legal defense costs, deductibles and self-insured retentions.

4. [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is a parent corporation of the operator); "On behalf of our affiliate" (if guarantor is a firm whose parent corporation is also the parent corporation of the operator); or "Incident to our business relationship with" (if guarantor is providing guarantee as an incident to a substantial business relationship with the operator) [Operator], Guarantor guarantees to the Board or its designee that for any and all third parties who may sustain bodily injury and/or property damage caused by accidental occurrences arising from operations of the facilities covered by this guarantee that in the event that [Operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property

damage to third-parties caused by accidental occurrences arising from the operation of the facilities named above or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage.

5. In the event of combination of this guarantee with another mechanism to meet operating liability coverage requirements, this guarantee will be considered [primary/excess] coverage.

6. Guarantor agrees that if at any time during or at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial means test criteria, guarantor shall send within ninety (90) days of such determination, by certified mail, written notice to the Board or its designee and to [Operator] that he or she intends to provide alternate liability coverage as specified in 14 CCR, Section 18488 in the name of [Operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [Operator] has done so.

7. The guarantor agrees to send written notice to the Board or its designee, by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., 101-1330, naming guarantor as debtor, within ten (10) days after commencement of the proceedings.

8. Guarantor agrees that within (30) days after being notified by the Board or its designee of a determination that guarantor no longer meets the financial means test criteria or that it is disallowed from continuing as a guarantor, that alternate liability coverage shall be established as specified in 14 CCR, Section 18488 in the name of [Operator] unless [Operator] has done so.

9. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability coverage requirements set by 14 CCR, Division 7, Chapter 6, Article 10 provided that such modification shall become effective only if the Board or its designee does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

10. Guarantor agrees to remain bound under this guarantee for so long as [Operator] must comply with the applicable requirements of 14 CCR, Division 7, Chapter 6, Article 10, for the facilities listed above, except as provided in paragraph 11 of this agreement.

11. Guarantor may terminate this guarantee by sending written notice by certified mail to the Board or its designee and to [Operator], provided that this guarantee may not be terminated unless and until [Operator] obtains, and the Board or its designee approves alternative liability coverage complying with 14 CCR, Section 18488.

12. Guarantor hereby expressly waives notice of acceptance of this guarantee.

13. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

14. The guarantor shall satisfy a third party liability claim only on receipt of one of the following documents:

(a) Certification from the operator and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [Operator] and [Name and address of third party(ies)] hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrence arising from operating [Operator's] solid waste disposal facility should be paid in the amount of $_____.

_____	_____	_____
Operator's Signature	Notary	Date
_____	_____	_____
Claimant's Signature	Notary	Date

(b) A valid final court order establishing a judgment against the operator for bodily injury or property damage caused by accidental occurrences arising from the operation of the operator's facility or group of facilities.

I hereby certify and sign under penalty of perjury under the laws of the State of California that the information in this document is true and correct to the best of my knowledge, and that this letter is worded as specified, and is being executed in accordance with, the requirements of Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18494.

Effective Date:

_____
(Name of Guarantor)

_____
(Authorized Signature for Guarantor)

_____
(Typed or Printed Name of Person Signing)

_____
(Title and Phone Number of Person Signing)

_____
(Signature of Witness or Notary and Seal)

PRIVACY STATEMENT

This information is requested by the California Integrated Waste Management Board under Title 14, California Code of Regulations, Division 7, Chapter 6, Article 10, Section 18494, in order to verify adequate financial assurance for major waste tire facilities. Submittal of the information requested is mandatory. The consequence of not providing this information is denial or revocation of a permit to operate a major waste tire facility. Information may be provided to the U.S. Environmental Protection Agency, State Attorney General, Air Resources Board, California Department of Toxic Substances Control, Energy Resources Conservation and Development Commission, Water Resources Control Board, and California Regional Water Quality Control Boards. For more information or access to your records, contact the California Integrated Waste Management Board, 1001 I Street, P.O. Box 4025, Sacramento, California 95812-4025, (916) 341-6000.

State of California
CIWMB 173 (New 05/04)

California Integrated Waste
Management Board

Retreader Self-Certification

In accordance with the California Code of Regulations (CCR), §18460.2.1, **Waste Tire Manifest System Requirements for Retreaders**, the Retreader identified below transports tire casings for the sole purpose of inspection, retreading, recasing, or recapping. The transportation of any used or waste tire not meeting these aforementioned specifications shall be manifested in accordance with CCR, §18460.2. By completing this form, the Retreader agrees to complete an invoice in accordance with CCR, §18459.2.1(b) for each pick-up or delivery of tire casings. Each pick-up or delivery of tire casings shall also be entered on the Retreader Trip Log (CIWMB 180) in accordance with the directions on the form.

The Retreader shall not transport any tire casings without having a copy of the invoice form and Retreader Trip Log in the vehicle transporting the tire casings. The invoice form and Retreader Trip Log shall be shown upon demand to any representative of the Board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the California Penal Code, or any local public officer designated by the Board. The Retreader shall retain a copy of the completed invoice forms and Retreader Trip Logs at their place of business for a period of three (3) years. These records shall be made available to any authorized representative as stated above.

Please complete the following information:

Retreader Business Name:			Phone: ( )
D.B.A.s, *if any*:			
TPID #:	U.S. DOT 3- Digit Identification:	R	
Name of Contact Person:			
Business Address *(Physical Location)*:			
City:		State:	ZIP Code:
Mailing Address, *if different*:			
City:		State:	ZIP Code:
Number of CIWMB Registered Vehicles Hauling Tire Casings:			

I certify under penalty of perjury under the laws of the State of California that: 1) I operate a Retreading business within the State of California pursuant to California Code of Regulations, §18450(a)(19); and 2) the information provided above is true and correct. In addition, I am aware that falsification of this information may result in suspension, revocation, or denial of renewal of the waste tire hauler registration pursuant to Public Resources Code, section 42960 and may result in civil penalties up to $25,000 per violation, per day or administrative penalties up to $5,000 per violation, per day as described in Public Resources Code, section 42962.

(Printed Name) (Signature) (Date)

Submit form to **C.I.W.M.B.**
P.O. Box 4025, MS-22
Sacramento, CA 95812
Attention: Waste Tire Hauler Registration & Manifest Program

CA Retreader Trip Log

EXAMPLE 123 - Blue or Black Ink Pen

California Integrated Waste Management Board
PO Box 4025, Sacramento, CA 95812-1259

State of California
CIWMB-180 (New 03/04) INSTRUCTIONS ON BACK DO NOT TAPE, STAPLE OR DUPLICATE

Retread Log Number
R9 - 1234567

Tire Program ID	Site Suffix	
	-	
Phone Number (include area code)		
( ) -		

Decal Number	License Plate Number	DOT	Load Date (MM/DD/YY)
-		R/	/ /

Tire Program ID - Site Suffix / Invoice Number	Business Name / Address	Pickup Count	Delivery Count
-			
-			
-			
-			
-			
-			

I certify under penalty of perjury under the laws of the State of California that the information provided above is true and correct. In addition, I am aware that falsification of this information may result in suspension, revocation, or denial of renewal of the Waste Tire Hauler Registration pursuant to Public Resources Code section 42960 and may result in civil penalties up to $25,000 per day, per violation or administrative penalties up to $5,000 per violation per day as described in Public Resources Code section 42962.

Totals:	,	,

Driver's Name (print) Driver's Signature Date

Toll Free 1-866-896-0600 / www.ciwmb.ca.gov/Tires/

White: CIWMB Copy Yellow: Retreader Copy

Toll Free 1-866-896-0600 / www.ciwmb.ca.gov/Tires/

CA Comprehensive Trip Log and Receipts

EXAMPLE 123 — 10002

Blue or Black Ink Pen

California Integrated Waste Management Board
P.O. Box 1259, Sacramento, CA 95812 – 1259

Comprehensive Trip Number

State of California CIWMB 201 (10/05)

INSTRUCTIONS ON BACK OF PART 2 DO NOT TAPE, STAPLE OR DUPLICATE

By signing this CA Comprehensive Trip Log and Receipt, the signer(s) request that the information provided on this form will be considered confidential, proprietary and trade secret. In accordance with Title, 14 CCR, Section 17041 et seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number provided on this form or receipt.

Vehicle Information

Truck Decal Number — —

License Plate Number — State

Hauler Address
Business Name
Address
City, State and Zip

☐ Common Carrier

I certify under penalty of perjury under the laws of the State of California that the information provided above is true and correct. In addition, I am aware that falsification of this information may result in suspension, revocation, or denial of renewal of the Waste Tire Hauler Registration pursuant to Public Resources Code section 42960 and may result in civil penalties up to $ 25,000 per day, per violation or administrative penalties up to $5,000 per violation per day as described in Public Resources Code section 42962

Driver's Name (print) Driver's Signature Date

Customer Manifest Receipt

Comprehensive Trip Log Number	Load Information	Facility Tire Program ID / Site Suffix
-- C	☐ Pick Up ☐ Delivery	–
Hauler Tire Program ID / Site Suffix: –	DATE / /	Facility Telephone Number –
Hauler Name	TYPE ☐ Whole Tire Count ☐ Weight in Lbs. ☐ Volume Cubic Yds. ☐ Weight in Tons	Facility Business Name/Address City, State and Zip
Hauler Telephone Number	AMT . (N /A for Whole Tires)	Stamp or Label OK ☐ Address Same as Hauler
		I CERTIFY THAT UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT. Initials

Customer Manifest Receipt

Comprehensive Trip Log Number	Load Information	Facility Tire Program ID / Site Suffix
-- B	☐ Pick Up ☐ Delivery	–
Hauler Tire Program ID / Site Suffix: –	DATE / /	Facility Telephone Number –
Hauler Name	TYPE ☐ Whole Tire Count ☐ Weight in Lbs. ☐ Volume Cubic Yds. ☐ Weight in Tons	Facility Business Name/Address City, State and Zip
Hauler Telephone Number	AMT . (N /A for Whole Tires)	Stamp or Label OK ☐ Address Same as Hauler
		I CERTIFY THAT UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT. Initials

Customer Manifest Receipt

Comprehensive Trip Log Number	Load Information	Facility Tire Program ID / Site Suffix
-- A	☐ Pick Up ☐ Delivery	–
Hauler Tire Program ID / Site Suffix: –	DATE / /	Facility Telephone Number –
Hauler Name	TYPE ☐ Whole Tire Count ☐ Weight in Lbs. ☐ Volume Cubic Yds. ☐ Weight in Tons	Facility Business Name/Address City, State and Zip
Hauler Telephone Number	AMT . (N /A for Whole Tires)	Stamp or Label OK ☐ Address Same as Hauler
		I CERTIFY THAT UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT. Initials

By initialing this Comprehensive Trip Log (CTL) receipt, the signer(s) requests that information provided on this form will be considered confidential, proprietary and / or a trade secret. In accordance with Title 14, CCR, Section 17401 et. Seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number on this receipt.

By initialing this Comprehensive Trip Log (CTL) receipt, the signer(s) requests that information provided on this form will be considered confidential, proprietary and / or a trade secret. In accordance with Title 14, CCR, Section 17401 et. Seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number on this receipt.

By initialing this Comprehensive Trip Log (CTL) receipt, the signer(s) requests that information provided on this form will be considered confidential, proprietary and / or a trade secret. In accordance with Title 14, CCR, Section 17401 et. Seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number on this receipt.

Comprehensive Trip Log Instructions

The Comprehensive Trip Log is used by the hauler to document waste tire pickups and deliveries. If waste/used tires are unloaded and stored for any period of time, the storage location becomes the end use facility and a "delivery" must be shown. The next time the tires are moved, the storage location becomes the generator site and a new receipt must be completed showing a "pick up". To order additional forms or if you have questions regarding the Used/Waste Tire Program call **1-866-896-0600** or visit CIWMB's web site at **www.ciwmb.ca.gov/Tires/**.

1. Write your **Decal Number** in the boxes provided.
2. Write your **Vehicle License Plate** and the **State of Issuance** in the boxes provided.
3. Print the **Hauler Business Name, Address, City, State,** and **Zip**. If a business stamp or preprinted label is used, stamp/label all three copies of the Comprehensive Trip Log (Original, CIWMB and Hauler copies). Check box, if common carrier exempt.
4. Print **Driver's Name** in the space provided.
5. The **Driver** shall **Sign** the form and enter the **Date** the CTL is being used.
6. As pickup and deliveries are made, the **Driver** will complete all required information in Receipts A, B, and C, respectively, for each tire transaction that is made, regardless of the amount of tires. Each receipt shall contain the following information:
    a. Complete **Hauler Tire Program Identification Number.**
    b. **Hauler Name and Telephone Number.**
    c. Whether the tire transaction is a **"Pick up" or "Delivery"**; check appropriate box.
    d. **Date** of the tire transaction (month, day, year; i.e. 03/18/05).
    e. **Type** of tire count (Whole Tire, Volume in cubic yards, Weight in Pounds, or Weight in Tons); check appropriate box.
    f. **Amount** of tires; this is the quantity of tires (use decimal for tons only).
    g. Complete **Facility Tire Program Identification Number** with suffix.
    h. **Facility Telephone number.**
    i. **Facility Business Name, Address, City, State, and Zip**. If a business stamp or preprinted label is used, stamp/label all three (3) copies of the Comprehensive Trip Log (Original, CIWMB and Hauler copies).
    j. **Same as Hauler box;** check if the facility location is also the Hauler's business location.
7. The **Generator/End Use Facility Operator** will initial the receipt after verifying the information entered by the Hauler is true and correct.
8. **Generator/End Use Facility Operator** will retain a copy of their respective receipt for a period of three (3) years at their place of business.
9. ***Hauler:*** *Mail the last copy of Comprehensive Trip Log to CIWMB within 14 days of the first transaction of this form (Receipt A) even if you have not completed all receipts on the CTL and retain copy for a minimum of 3 years.*

Instrucciones Para el Registro Único de Transporte

El Registro Único de Transporte es utilizado por el transportista para documentar la recolección y entrega de llanta de desecho. Si las llantas usadas/ de desecho se descargan y son almacenadas por cualquier periodo de tiempo, la ubicación de almacenamiento llega a ser la instalación de uso final y una "entrega" debe ser anotada. La próxima vez que se transportan las llantas, la ubicación de almacenamiento llega a ser el sitio del generador y un recibo nuevo se debe completar mostrando una "recolección". Para ordenar formas adicionales o si tiene preguntas con respecto al Programa de Llantas Usadas/ de Desecho, llame al **1-866-896-0600** o visite el sitio Web del CIWMB en **www.ciwmb.ca.gov/Tires/**.

1. Escriba su **Número de Calcomanía** en los cuadros proveídos.
2. Escriba su **Número de Placas** y el **Estado** en donde está registrado dicho vehiculo en los cuadros proveídos.
3. Escriba el **Nombre, Dirección, Ciudad, Estado,** y **Código Postal del Transportista**. Si utiliza un sello o etiqueta comercial, deben aplicarse a las tres copias del Registro Único de Transporte (Copias Originales, del CIWMB, y del Transportista). Marque la opción si es exento por ser "transportista común.
4. Escriba el **Nombre del Chofer** en el espacio proveído.
5. El **Chofer** debe **Firmar** el formulario y anotar la **Fecha** en la cual es utilizado.
6. Conforme se hacen recolecciones y entregas, el **Chofer** completará toda información requerida en Recibos A, B, y C, respectivamente, para cada transacción de llanta que se hace, sin tener en cuenta la cantidad de llantas. Cada recibo deberá contener la información siguiente:
    a. **Número de Identificación de Transportista del Programa de Llantas** completo.
    b. **Nombre y Número de Teléfono del Transportista.**
    c. Si la transacción es una **"Recolección"** o **"Entrega"**; marque la opción apropiada.
    d. **Fecha** de la transacción (mes, día, año; ejemplo 03/18/05).
    e. **Tipo** de carga (Llanta Entera, Volumen en Yardas Cúbicas, Peso en Libras, o Peso en Toneladas); marque la opción apropiada.
    f. **Cantidad** de llantas; (use el decimal para toneladas solamente).
    g. **Número de Identificación de Instalación del Programa de Llantas** completo con sufijo.
    h. **Número de Teléfono de la Instalación.**
    i. **Nombre de Negocio, Dirección, Ciudad, Estado, y Código Postal de la Instalación.** Si utiliza un sello o etiqueta comercial, deben aplicarse a las tres (3) copias del Registro Único de Transporte (Copias Originales, del CIWMB, y del Transportista).
    j. **Opción "Igual que Transportista";** marque la opción si la dirección de la instalación también es la dirección de negocio del transportista.
7. El **Operador de la Instalación** pondrá sus iniciales en el recibo después de verificar que la información anotada por el Transportista sea verdadera y correcta.
8. El **Operador de la Instalación** guardará una copia de su recibo respectivo por un periodo de tres (3) años en su lugar de negocio.
9. ***Transportista:*** *Envíe la copia del Registro Único de Transporte al CIWMB dentro de 14 días de la primera transacción de este formulario (Recibo A) aunque no haya completado todos los recibos en el mismo y guarde copia por un mínimo de 3 años.*

State of California
CIWMB 204 (New 8/05)

California Integrated Waste Management Board

Unregistered Hauler & Comprehensive Trip Log Substitution Form

Name and Address of Facility:

TPID# ☐☐☐☐☐☐☐-☐☐

Date & Name	License Plate & Decal Number (if applicable)	Hauler's Name/Address/Signature	Quantity & Type of Tires	Pick up/Delivery Status	Unregistered Tire Hauler or Exemption Status (if applicable)
/ / Name of Reporting Party	(License Plate) (State) Decal number (if applicable)	(Hauler Name) (Address) (City) (State) (Zip Code) Signature:	Quantity of Tires: Type of Load: ☐ Whole ☐ Cubic Yards ☐ Pounds ☐ Tons	Check One: ☐ Pick up ☐ Delivery	☐ Unregistered Tire hauler or Exemption (if applicable): ☐ LEA Exempt ☐ Government ☐ Commercial Carrier ☐ Agricultural Or ☐ No Manifest/CTL form
/ / Name of Reporting Party	(License Plate) (State) Decal number (if applicable)	(Hauler Name) (Address) (City) (State) (Zip Code) Signature:	Quantity of Tires: Type of Load: ☐ Whole ☐ Cubic Yards ☐ Pounds ☐ Tons	Check One: ☐ Pick up ☐ Delivery	☐ Unregistered Tire hauler or Exemption (if applicable): ☐ LEA Exempt ☐ Government ☐ Commercial Carrier ☐ Agricultural Or ☐ No Manifest/CTL form
/ / Name of Reporting Party	(License Plate) (State) Decal number (if applicable)	(Hauler Name) (Address) (City) (State) (Zip Code) Signature:	Quantity of Tires: Type of Load: ☐ Whole ☐ Cubic Yards ☐ Pounds ☐ Tons	Check One: ☐ Pick up ☐ Delivery	☐ Unregistered Tire hauler or Exemption (if applicable): ☐ LEA Exempt ☐ Government ☐ Commercial Carrier ☐ Agricultural Or ☐ No Manifest/CTL form
/ / Name of Reporting Party	(License Plate) (State) Decal number (if applicable)	(Hauler Name) (Address) (City) (State) (Zip Code) Signature:	Quantity of Tires: Type of Load: ☐ Whole ☐ Cubic Yards ☐ Pounds ☐ Tons	Check One: ☐ Pick up ☐ Delivery	☐ Unregistered Tire hauler or Exemption (if applicable): ☐ LEA Exempt ☐ Government ☐ Commercial Carrier ☐ Agricultural Or ☐ No Manifest/CTL form

Please submit this form within 30 days to: **CIWMB, Waste Tire Hauler Program, P.O. Box 4025, MS-22, Sacramento, CA 95812 or fax to (916) 319-7605**

State of California — California Integrated
CIWMB 303a (1/06) — Waste Management Board

Lead Agency[1] Form 303a Household Hazardous Waste Collection Information For Fiscal Year ____/____

[1]If your jurisdiction or agency was the Lead for collecting HHW, you will report your waste collection and disposal activity on the Lead Agency Form 303a

Section A. Reporting Requirements:

Purpose of Forms 303a and 303b

Each jurisdiction in California is mandated to complete Forms CIWMB 303a or 303b annually, with the amount of household hazardous waste (HHW) collected and its method of management reported on the Form 303a (California Code of Regulations, Title 14, Sections 18751.2). The Forms 303a and 303b specifically fulfill the reporting requirements of the Household Hazardous Waste Element of the California Integrated Waste Management Board's (CIWMB) Countywide Integrated Waste Management Plans. The Forms 303a and 303b are also regulated to satisfy the Department of Toxic Substances (DTSC) directive (Health and Safety Code Section 25218.10) to collaboratively maintain HHW volume totals with the Board for all HHW collection events, facilities, and programs within the State.

The completed Form 303a provides the total waste volume amounts collected for all HHW programs (including permanent, temporary, recycle only, mobile, door to door, and any other type of collection program the jurisdiction identifies as part of their HHW collection program) that were sponsored in the previous fiscal year, starting July 1 of the previous year and ending June 30 of the current year. The completed Forms 303a and 303b **must be sent to the DTSC** on or before **October 1 of each year.**

Who must fill out the Forms?

Each jurisdiction must fill out a Form 303a or 303b. If your jurisdiction or agency **was the Lead** for collecting HHW, you will report your waste collection and disposal activity on the Lead Agency Form 303a. If your jurisdiction or agency **did not have** a permitted HHW collection program during the previous fiscal year, or you were **not the Lead** for the collection program, you will complete the Non-Lead Agency Form 303b to satisfy the regulatory requirements. You may download the complete Lead Agency or Non-Lead Agency forms at http://www.ciwmb.ca.gov/hhw/Reporting/default.htm or contact DTSC at (916) 323-9618 to have one sent to you.

Where do I send my completed Form?

Completed forms shall be submitted electronically to the DTSC as an email attachment to **form303@dtsc.ca.gov**. You must first save the completed spreadsheet on your own computer under a new name. Use a name that will uniquely and clearly identify your jurisdiction or agency such as form303sacramento.xls, for example. Then, send the newly named completed spreadsheet as an E-mail attachment to the address above.

Upon request to the CIWMB, you may be exempted from filing electronically, and instead print out the completed spreadsheet and mail it to:

Department of Toxic Substances Control (DTSC)
Household Hazardous Waste (HHW) Unit - Form 303
P.O. Box 806
Sacramento, CA 95814-0806

Section B. Jurisdiction:

Please do not include your contractor's name.

Name of Public Agency Reporting:					
Non-Lead Participants Represented by Reporting Jurisdiction/Agency (i.e, individual city(ies), county(ies), other agency(ies)):	1)		5)		9)
	2)		6)		10)
	3)		7)		11)
	4)		8)		12)
Mailing Address:					
City:		**Zip code:**		**County:**	
HHW Program Manager:				**Phone Number:**	
Fax Number:		**Email Address:**			
Contractor's Name (if applicable):					
Name of Permanent Facility within Program Service Area (if applicable):				**EPA ID#:**	
Site Contact Name/Title:				**Phone Number:**	
Facility Address:				**Email Address:**	
City:		**Zip Code:**		**County:**	

Name of Permanent Facility within Program Service Area (if applicable):				EPA ID#:	
Site Contact Name/Title:				Phone Number:	
Facility Address:				Email Address:	
City:		Zip Code:		County:	
Name of Permanent Facility within Program Service Area (if applicable):				EPA ID#:	
Site Contact Name/Title:				Phone Number:	
Facility Address:				Email Address:	
City:		Zip Code:		County:	

For additional permanent facilities within the program service area, please attach a separate page.

Section C. Program Types:

The program types include Permanent, Temporary (periodic), Mobile, Recycle-only program, Door-to-Door (residential), Curbside (other than oil),) Load Check and/or Other (identify type of program). **Remember - Certified Oil Centers and Curbside Oil collection programs, whose oil is reported as part of a jurisdiction's Used Oil Block grant, should not be included in Form 303 reporting.**

Section D. EPA ID Numbers:

Please list all EPA ID Numbers for each program type used last year (add additional rows if necessary).

Program Type	EPA ID Number	Program Type	EPA ID Number

Section E. Participation:

Number of Households that participated in collection program:	
Number of Households in service area:	

Section F. Waste Volumes:

Example: In the example sheet below, for the period July 1, 2004 to June 30, 2005 under the heading "Pounds Collected by Program Type" the City has entered the number of pounds of material in the waste stream "Flammable liquids / solids" collected within the City into the cell corresponding to the program type used to collect the material. In this example case, 40 pounds was collected at a permanent facility, 50 pounds at a temporary event site, and 20 pounds were collected during load checks. The spreadsheet will calculate the total amounts for you. On the right side of the spreadsheet, under "Pounds Disposed / Diverted", the City has entered the estimated number of the total pounds of collected material in the cell corresponding to the management method used to dispose or divert the material. In this case 66 pounds of the total collected material was sent to destructive incineration and 44 pounds was incinerated as fuel. The spreadsheet will calculate the total pounds for you. Please check to be sure that the "Total Pounds Collected" is the same as "Total Pounds Disposed/Diverted."

Material Type		Pounds Collected by Program Type								Pounds Disposed / Diverted by Management Method							
EXAMPLE		Permanent Facility	Temporary (periodic) Facility	Mobile Facility	Recycle-only Facility	Door to Door (residential) Program	Curbside Program (other than oil)	Load Check	Other (name) _____	Total Weight Collected (in pounds)	Destructive Incineration	Fuel Incineration	Landfill	Neutralization / Treatment	Recycled	Reused	Stabilization	Total Pounds Disposed / Diverted
1. Flammable and Poison	Flammable solids / liquids	40	50					20		110	66	44						110

Section F. Waste Volumes:

Instructions: Enter the number of pounds of material in the waste stream collected within the area into the cell corresponding to the program type used to collect the material. The spreadsheet will calculate the total amounts for you. Also enter the estimated number of pounds of the collected material in the cell corresponding to the management method used to dispose or divert the material. Definitions of the "Management Methods" are presented in Title 14, 18751.2.1 (c). The spreadsheet will calculate the total pounds disposed or diverted for you. Note: Quantities reported under "Load Check" and other collection categories should not be double counted under "Permanent Facility."

Material Type		Pounds Collected by Program Type									Pounds Disposed / Diverted by Management Method							
		Permanent Facility	Temporary (periodic) Facility	Mobile Facility	Recycle-only Facility	Door to Door (residential) Program	Curbside Program (other than oil)	Load Check	Other (name)	Total Weight Collected (in pounds)	Destructive Incineration	Fuel Incineration	Landfill	Neutralization / Treatment	Recycled	Reused	Stabilization	Total Pounds Disposed / Diverted
1. Flammable and Poison	Flammable solids / liquids									0								0
	Bulked flammable liquids									0								0
	Oil - base paints									0								0
	Poisons									0								0
	Reactive and explosive									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2. Acid	Inorganic and organic acid									0								0
3. Base	Inorganic and organic base									0								0
4. Oxidizer	Neutral oxidizers, Organic peroxides, Oxidizing acid, and Oxidizing base									0								0
5. PCB - containing	PCB - containing paint									0								0
	Other PCB waste (includes ballasts)									0								0

Material Type		Pounds Collected by Program Type									Pounds Disposed / Diverted by Management Method							
		Permanent Facility	Temporary (periodic) Facility	Mobile Facility	Recycle-only Facility	Door to Door (residential) Program	Curbside Program (other than oil)	Load Check	Other (name)	Total Weight Collected (in pounds)	Destructive Incineration	Fuel Incineration	Landfill	Neutralization / Treatment	Recycled	Reused	Stabilization	Total Pounds Disposed / Diverted
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6. Reclaimable	Antifreeze									0								0
	Auto type batteries (motor vehicles)									0								0
	Latex paint									0								0
	Motor oil/oil products									0								0
	Used oil filters (recyclables only)									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7. Asbestos	Asbestos									0								0
8. Universal Waste (UW) *	Mercury containing thermostats / automatic switches / thermometers / and novelties									0								0
	Mercury containing waste (other)									0								0
	Fluorescent tubes/bulbs									0								0
	Rechargeable batteries									0								0
	Other batteries									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Electronic Waste (UW)	Covered Electronic Devices									0								0

Material Type		Pounds Collected by Program Type									Pounds Disposed / Diverted by Management Method							
		Permanent Facility	Temporary (periodic) Facility	Mobile Facility	Recycle-only Facility	Door to Door (residential) Program	Curbside Program (other than oil)	Load Check	Other (name)	Total Weight Collected (in pounds)	Destructive Incineration	Fuel Incineration	Landfill	Neutralization / Treatment	Recycled	Reused	Stabilization	Total Pounds Disposed / Diverted
	Universal Waste Electronic Devices									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Empty Aerosol Containers (UW)	Empty aerosol containers									0								0
Other UW	(name)									0								0
	all UW subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	* To be considered Universal Waste, all waste in this category except for batteries, must be managed by recycling. Energy recovery or fuel incineration is not considered recycling. If the waste cannot be managed by recycling, it is not universal waste and must be managed as a hazardous waste. The completed Disposed/Diverted Management Methods section will show whether or not wastes were managed as a universal waste.																	
9. Other HHW	Home - generated sharps									0								0
	Pharmaceutical Waste									0								0
	Compressed gas cylinders									0								0
	Treated wood									0								0
	Non - UW aerosol containers (corrosive, flammable, poison)									0								0
	Other (name) _____									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10. Grand	**Total**	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

State of California	California Integrated
CIWMB 303b (1/06)	Waste Management Board

Non-Lead Agency[1] Form 303b Household Hazardous Waste Collection Information For Fiscal Year _____/_____

[1]If your jurisdiction or agency did not have or was not the Lead for an HHW collection program, you will complete the Non-Lead Agency Form 303b

Section A. Reporting Requirements:

Purpose of Forms 303a and 303b

Each jurisdiction in California is mandated to complete Forms CIWMB 303a or 303b annually, with the amount of household hazardous waste (HHW) collected and its method of management reported on the Form 303a (California Code of Regulations, Title 14, Sections 18751.2). The Forms 303a and 303b specifically fulfill the reporting requirements of the Household Hazardous Waste Element of the California Integrated Waste Management Board's (CIWMB) Countywide Integrated Waste Management Plans. The Forms 303a and 303b are also regulated to satisfy the Department of Toxic Substances (DTSC) directive (Health and Safety Code Section 25218.10) to collaboratively maintain HHW volume totals with the Board for all HHW collection events, facilities, and programs within the State.

The completed Form 303a provides the total waste volume amounts collected for all HHW programs (including permanent, temporary, recycle only, mobile, door to door, and any other type of collection program the jurisdiction identifies as part of their HHW collection program) that were sponsored in the previous fiscal year, starting July 1 of the previous year and ending June 30 of the current year. The completed Forms 303a and 303b **must be sent to the DTSC** on or before **October 1 of each year.**

Who must fill out the Forms?

Each jurisdiction must fill out a Form 303a or 303b. If your jurisdiction or agency **was the Lead** for collecting HHW, you will report your waste collection and disposal activity on the Lead Agency Form 303a. If your jurisdiction or agency **did not have** a permitted HHW collection program during the previous fiscal year, or you were **not the Lead** for the collection program, you will complete the Non-Lead Agency Form 303b to satisfy the regulatory requirements. You may download the complete Lead Agency or Non-Lead Agency forms at http://www.ciwmb.ca.gov/hhw/Reporting/default.htm or contact DTSC at (916) 323-9618 to have one sent to you.

Where do I send my completed Form?

Completed forms shall be submitted electronically to the DTSC as an email attachment to **form303@dtsc.ca.gov**. You must first save the completed spreadsheet on your own computer under a new name. Use a name that will uniquely and clearly identify your jurisdiction or agency such as form303sacramento.xls, for example. Then, send the newly named completed spreadsheet as an E-mail attachment to the address above.

Upon request to the CIWMB, you may be exempted from filing electronically, and instead print out the completed spreadsheet and mail it to:

Department of Toxic Substances Control (DTSC)
Household Hazardous Waste (HHW) Unit - Form 303
P.O. Box 806
Sacramento, CA 95814-0806

Section B. Non-Lead Agency Information:

Name of Public Agency Reporting:					
Jurisdiction/Agency Sponsoring Program (Who is the Lead agency that handles or sponsors your jurisdiction's HHW?):					
Reporting Agency Mailing Address:					
City:		**Zip code:**		**County:**	
Reporting Agency Contact for HHW info:				**Phone Number:**	
Fax Number:		**Email Address:**			

Section C. Universal Waste Volumes:

Instructions:	Complete this section if your Non-Lead agency/jurisdiction ran or held a community clean-up event at which univeral waste was accepted and/or which has initiated battery and/or lamp collection programs outside the Lead agency's HHW collection program and, thus, collection will not be reported by another agency.

Material Type		Pounds Collected by Program Type									Pounds Disposed / Diverted by Management Method							
		Permanent Facility	Temporary (periodic) Facility	Mobile Facility	Recycle-only Facility	Door to Door (residential) Program	Curbside Program (other than oil)	Load Check	Other (name)	Total Weight Collected (in pounds)	Destructive Incineration	Fuel Incineration	Landfill	Neutralization / Treatment	Recycled	Reused	Stabilization	Total Pounds Disposed / Diverted
Universal Waste (UW) *	Mercury containing thermostats / automatic switches / thermometers / and novelties									0								0
	Mercury containing waste (other)									0								0
	Fluorescent tubes/bulbs									0								0
	Rechargeable batteries									0								0
	Other batteries									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Electronic Waste (UW)	Covered Electronic Devices									0								0
	Universal Waste Electronic Devices									0								0
	subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Empty Aerosol Containers (UW)	Empty aerosol containers									0								0
Other UW	(name)									0								0
	UW Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	* To be considered Universal Waste, all waste in this category except for batteries, must be managed by recycling. Energy recovery or fuel incineration is not considered recycling. If the waste cannot be managed by recycling, it is not universal waste and must be managed as a hazardous waste. The completed Disposed/Diverted Management Methods section will show whether or not wastes were managed as a universal waste.																	

For Agency Use Only
File # _____
Eligible _____
_____

State of California

California Integrated Waste Management Board

APPLICATION COVER SHEET – USED OIL RECYCLING BLOCK GRANT

CIWMB–306 (9/92)

Name of Applicant:

Address: City: Zip:

Name of Program Director: Title: Phone:

Name of Finance Officer: Title: Phone:

Name of Program Manager: Title: Phone:

Type of Program: _____

Total Grant Request: _____

Certification:

I assume the responsibility to ensure compliance with all state and local environmental requirements and all related codes, laws, regulations, and guidelines prior to the expenditure of the grant funds.

I further declare under penalty of perjury that all information submitted for the Board's consideration for allocation of grant funds is true and accurate to the best of my knowledge and belief.

Name of Authorized Person: _____

Signature: _____

Title: _____ Phone: _____ Date: _____

[The next page is 806.263.]

STATE OF CALIFORNIA
CIWMB 430
1/99

CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD

Newsprint Consumer Certification

California law requires that you certify your newsprint use to the Integrated Waste Management Board by March 1 of each year.

Section I - Consumer Information Instructions

- Indicate dates as month/day/year.
- Complete spaces 1 through 12.
- If you did not use any newsprint last year, mark space 13 and 15, 16 and / or 17, sign, and return the form.
- If all the newsprint you used last year was bought or contracted before January 1, 1990, complete box 14, sign and return the form.
- If you used any newsprint last year, complete sections II, III, IV, sign and return the form.
- Optional questions - numbered page 4 of insert.

Return form to:
Integrated Waste Management Board
ATT: Newsprint Certification Program
1001 I Street, 13th Floor
Sacramento, CA 95814

❒ NAME OR ADDRESS CHANGE

Certification Document Number: _____

Section I - Consumer Information

Please type or print legibly in ink and return by mail. Use "N/A" for items which are not applicable.
Reporting Period: **January 1 through December 31, 2000.**

Contact person (first name, middle initial, last name) (1)		Date (2) / /	
Company name (3)		Phone number (4) ( ) -	
Mailing address (5)	City (6)	State (7)	ZIP® code (8)
Physical address (if different from mailing address) (9)	City (10)	State (11)	ZIP® code (12)

I did not use any newsprint in my commercial printing or publishing operation during this reporting period. ☐ (13)

I purchased all the newsprint I used before January 1, 1990. ☐ (14)

If applicable, provide the company names and addresses of your newsprint printers

_____
_____
_____

I am a: publisher ☐ (15)
printer ☐ (16)
other _____ ☐ (17)

Certification Instructions

Certification to be made by:

- **Corporation**: By a responsible corporate officer or manager authorized to make management decisions which govern the operation of the commercial printing or publishing operation.
- **Partnership or sole proprietorship**: By the general partner or the proprietor.
- **Government agency**: By either the principal executive officer or a ranking elected official.

Certification

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision, that to the best of my knowledge and belief, the information provided is true, accurate, and complete. I am aware that there are significant penalties for submitting false information in this certification, including the possibility of fine or imprisonment, or both, for violations.

_____ _____
Signature of individual authorized to sign Title of authorized person

_____ _____ ( ) -
Typed or printed name of person signing Date Phone number

Company Name: _____ Certification Document Number: _____

Page 2

Section II - Newsprint Use Instructions

- Complete this section for newsprint used during this reporting period.
- If you meet the 50% recycled newsprint use goal, sign and return the form.
- If you did not meet the recycled newsprint use goal, complete sections III, IV, sign and return the form.
- Recycled-Content newsprint means that the fiber content contains no less than 40% post consumer waste paper.
- Please report in metric tons; 2204.6 pounds (LBS.) equals one metric ton.

Section II - Percent of Recycled-content Newsprint Used

Total **metric tons** of all newsprint used this reporting period	(1)	
Total **metric tons** of all newsprint used this reporting period that was purchased after January 1, 1990.	(2)	
Total **metric tons** of recycled-content newsprint used this reporting period that was purchased after January 1, 1990	(3)	
Total metric tons of nonrecycled-content newsprint used this reporting period that was purchased after January 1, 1990. (subtract line 3 from line 2).	(4)	
Percent of recycled-content newsprint used this reporting period. (Line 3 ÷ Line 2 x 100) Round to the nearest percent. For example, 24.5% becomes 25%, 24.4 % becomes 24%.	(5)	%

Section III - Exemptions Instructions

- Complete this section if you did not meet the recycled-content newsprint use goal of 50 percent.
- You must keep records to document your claims, but don't send them to the Board at this time.

Section III - Exemptions

Only three conditions exempt a consumer from meeting recycled-content newsprint use requirements for any reporting period. Mark the exemption or exemptions you claim.

The recycled-content newsprint was not available at a comparable price to that for newsprint which is not recycled-content newsprint. See Public Resources Code §42773 and regulation section 17966.	Exemption 1 ☐	(1)
The recycled-content newsprint did not meet the quality standards established by the Board. See Public Resources Code §42773 and regulation section 17964.	Exemption 2 ☐	(2)
The particular grade of recycled-content newsprint would not have been available in a reasonable time. See Public Resources Code §42773 and regulation section 17968.	Exemption 3 ☐	(3)

Explain specific reason: _____

_____

_____

Section IV - Good Faith Certification Instructions

- Complete this section if you did not meet the recycled-content newsprint goal of 50 percent.
- Use the section on page 3 if you need more space and insert into the form before mailing.

Section IV - Good Faith Certification

In order to make your certification of exemption in good faith, list all newsprint suppliers or producers with whom you had purchase discussions or who offered to sell you recycled-content newsprint within the preceding 12 months. See Public Resources Code §42773.

Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -

Mailing address (4)	City (5)	State (6)	Zip (7)

Company Name:_____ Certification Document Number:_____

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Section IV - Good Faith Certification

In order to make your certification of exemption in good faith, list all newsprint suppliers or producers with whom you had purchase discussions or who offered to sell you recycled-content newsprint within the preceding 12 months. See Public Resources Code §42773.

Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)
Name of Operation (1)	Contact person (2)	Phone number (3) ( ) -
Mailing address (4)	City (5)	State (6) / Zip (7)

Company Name:_____ Certification Document Number:_____

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Optional Questions Instructions

- This section is optional
- We are collecting information on the transfer of newsprint.
- Copy the section before you complete it if you need more space.

Optional Questions

To help us accurately assess the reliability and validity of the information contained in this certification and to determine if modification to the regulations may be necessary, we would appreciate your completing this section.

	Yes	No	
(1) Have you sold newsprint to another consumer in the last five years?			
(2) Have you traded newsprint with another consumer in the last five years?			

(3) Average transactions per year?

(4) Average metric tons per transaction?

To whom have you sold or traded newsprint in the last five years?

Name (5)	Date (6)	**Metric tons** (7)	Grade (8)
Address (9)	City (10)	State (11)	Zip (12)
Name (5)	Date (6)	**Metric tons** (7)	Grade (8)
Address (9)	City (10)	State (11)	Zip (12)
Name (5)	Date (6)	**Metric tons** (7)	Grade (8)
Address (9)	City (10)	State (11)	Zip (12)
Name (5)	Date (6)	**Metric tons** (7)	Grade (8)
Address (9)	City (10)	State (11)	Zip (12)

WASTE TIRE FACILITY PERMIT APPLICATION

I. TYPE OF APPLICATION (please print or type)	SWIS #:	
☐ New Permit ☐ Permit Renewal ☐ Permit Revision	*CIWMB use only*	
☐ Application Amendment	*Date Received:*	
	Date Accepted:	
	Date Rejected:	

II. TYPE OF FACILITY
☐ Existing ☐ Proposed
☐ Major Waste Tire Facility (5,000 or more tires)
☐ Minor Waste Tire Facility (500 or more tires, but less than 5,000)

III. GENERAL INFORMATION												
Facility Name:												
Facility Mailing Address:												
City:		County:		State:		Zip:		Phone:				
Facility Location (if different from mailing address):												
City:		County:		State:		Zip:		Phone:				
Assessor's Parcel Number(s):		GPS Coordinates:		Site Acreage:								
Facility Operator's Name:												
Mailing Address:												
City:		County:		State:		Zip:		Phone:				
Property Owner's Name (if different from operator):												
Mailing Address:												
City:		County:		State:		Zip:		Phone:				

IV. AGENCY INFORMATION			
Fire Authority Agency Name:			
Contact Person:		Phone:	
Vector Control/Mosquito Abatement Agency Name:			
Contact Person:		Phone:	

V. TYPE AND QUANTITY OF WASTE TIRES				
Type of Waste Tires Received:	☐ Whole Passenger	☐ Whole Truck	☐ Whole Tractor	☐ Split Tires
	☐ Whole Earthmover/Construction Equipment	☐ Cut Tires	☐ Shredded Tires	
	☐ Other:			
Number of Waste Tires Stored or Maintained On-Site:				
Maximum Capacity:				

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APPLICATION FORM
Page 2 of 2

DRAFT

VI. EQUIPMENT

Types of On-Site Processing Equipment:	☐ Stationary Shredder	☐ Bailer	☐ Splitter	☐ Cutter
	☐ Mobile Shredder	☐ Other:		

VII. PROPOSED CHANGE TO FACILITY

☐ Design (describe):	
☐ Operation (describe):	
☐ Administrative (describe):	
☐ No Change:	
Proposed Date of Change:	

VIII. REQUIRED DOCUMENTS (attachments)

Major & Minor WTF:	☐ Operation Plan (CIWMB 501)	☐ Environmental Form (CIWMB 502)	☐ Emergency Response Plan (CIWMB 503)
	☐ Vector Control Info.	☐ Fire Department Info.	☐ Property Lease Agreement
	☐ Verification that applicable local, state, and federal permits and approvals have been acquired.		
For Major WTFs, also include the following:	☐ Closure Plan (CIWMB 504)	☐ Reduction/Elimination Plan	☐ Financial Assurance
	☐ Operating Liability		

IX. OWNER SIGNATURE

I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

Property Owner or Agent Signature:			
Typed Name & Title:		Date:	

X. OPERATOR CERTIFICATION

I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

Facility Operator or Agent Signature:			
Typed Name & Title:		Date:	

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WASTE TIRE FACILITY OPERATION PLAN

California Code of Regulations (CCR), Title 14, §18432 requires that an Operation Plan be submitted as part of a waste tire facility permit application. For ease of reference, the applicable CCR section numbers are indicated where appropriate on this form.

I. GENERAL INFORMATION (please print or type)								**SWIS #:**	
Facility Name:									
Facility Mailing Address:									
City:		County:		State:		Zip:		Phone:	

II. FACILITY OPERATION DESCRIPTION (attach additional pages if necessary)	
Days and hours of operation:	
Days and hours open to public:	
How will waste tires be received?	☐ Self Haul ☐ Common Carrier ☐ Public ☐ Other:
How will waste tires be stored?	☐ Outdoors (Complete Sections I, II, III, V, and VI) and/or ☐ Indoors (Complete Sections I, II, IV, V, and VI)
Describe storage method(s):	
Describe on-site processing (e.g., shredding, buffing, milling, baling, product manufacturing, etc.):	
Haul Destinations/Sites:	
You will be permitted for the maximum quantity of waste tires that you intend to store during the five year permit period, not to exceed the amount that can be stored in compliance with 14 CCR, Division 7, Chapter 3, Article 5.5, sections 17350 through 17356. Financial Assurances shall be based on the permitted quantity.	
+ **Maximum quantity of waste tires to be stored:**	

III. OUTDOOR STORAGE REQUIREMENTS			
A. FIRE PREVENTION MEASURES - §17351			
On-Site Emergency Communications:	☐ Phone:	☐ Radio:	
	area code/number		type/channel, band, or net
On-Site Emergency Equipment:			
☐ One, dry chemical fire extinguisher	Weight:		
☐ One, 2½ gallon water extinguisher			
☐ One, pike pole at least 10 feet in length			
☐ One round point and one square point shovel			
Describe additional equipment on-site. Any local fire authority requirements? Attach any local fire authority agreement/approval.			

CIWMB 501 (9/02)

OPERATION PLAN
Page 2 of 5

III. OUTDOOR STORAGE REQUIREMENTS CON'T

A. FIRE PREVENTION MEASURES CON'T - §17351

Water Supply (indicate flow in gallons per minute or containment capacities in gallons):

☐ Hydrant/Capacity:		☐ Water Tank/Capacity:	
☐ Well/Capacity:		☐ Other, explain:	

☐ Local fire authority agreement/approval (attach)

B. FACILITY ACCESS AND SITE SECURITY - §17352

Attendant Present?	☐ Yes ☐ No	If Yes, days/hours present:	
Access Control:	☐ Perimeter Fencing ☐ Locked Gates ☐ Other, describe:		

Is there access to the site for emergency vehicles?	☐ Yes ☐ No	If No, explain:	

C. VECTOR CONTROL MEASURES - §17353

☐ Vector Control Plan approved/certified by (attach):

- ☐ Local Environmental Health Department
- ☐ Mosquito Abatement District
- ☐ Other, specify:

☐ Describe type of cover(s) or impermeable barrier(s) if utilized for vector control:

☐ Other vector control measures, explain:

D. STORAGE OF WASTE TIRES - §17354

Provide the number of waste tire storage units (existing and/or proposed) and the dimensions of each. Indicate locations, by pile number, with distances from structures and property boundaries on site map (attach additional pages if necessary).

Pile #	Dimension (L × W × H)	Cubic Feet	Existing (E) or Proposed (P)

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OPERATION PLAN
Page 3 of 5

III. OUTDOOR STORAGE REQUIREMENTS CON'T

D. STORAGE OF WASTE TIRES CON'T - § 17354

Do any waste tire storage units exceed 10 feet in height?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

Do any waste tire storage units exceed 5,000 sq. ft. in area?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

Do any waste tire storage units within 20 feet of a property line exceed 6 feet in height?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

Are waste tires stored less than 10 feet from the property line?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

Are waste tires stored less than 40 feet from vegetation or other flammable materials?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

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OPERATION PLAN
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III. OUTDOOR STORAGE REQUIREMENTS CON'T

D. STORAGE OF WASTE TIRES CON'T - §17354

Are fire lanes between adjacent waste tire storage units and between waste tire storage units and structures that are located either on-site or off-site less than the minimum width specified in §17354?

☐ No

☐ Yes (attach fire authority approved requirements)

If Yes, explain:

Describe how surface water drainage will be diverted around and away from the waste tire storage area. Describe and/or indicate on appropriate map (may be included on map required under Part V. Map Requirements on Page 5).

Describe how any nearby bodies of water will be protected from water or pyrolytic oil runoff in the event of a tire fire. Describe and/or indicate on appropriate map (may be included on map required under Part V. Map Requirements on Page 5).

Are there grades or other physical features that would interfere with fire fighting equipment or personnel?

☐ No

☐ Yes (existing facility – attach fire authority approved requirements)
(new facility – see §17354(f)(2))

If Yes, explain:

If this Operation Plan is for a new waste tire facility, will it be sited in an area subject to immersion in water during a 100-year storm?

☐ No

☐ Yes

If Yes, explain (i.e., how the facility will be designed and operated so as to prevent waste tires from migrating off-site):

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OPERATION PLAN
Page 5 of 5

IV. INDOOR STORAGE
INDOOR STORAGE REQUIREMENTS - §17356
☐ Meets NFPA 231D Standards (attach verification)
☐ Alternative standards approved by the local fire authority (attach approval)

V. MAP REQUIREMENTS (Minor facilities provide items a and b, Major facilities provide items a through f):	
a.	General area location, with additional larger scale if needed to show proximity to nearest town, city, or major highway.
b.	Plot plan of site, drawn to scale, which shows:
	1. Legal boundaries for which title or leasehold is held (attach copy of lease agreement for property, if applicable);
	2. All buildings or structures on-site, indicating use; all other structures within 200 feet of site boundary;
	3. Site access including road or street names;
	4. Location of fences, gates, and other access control measures; and
	5. Dimensions of existing and planned tire storage units, fire lanes, fire breaks.
c.	Site topography, including:
	1. Drainage swales, ditches, berms, surface waters, wetlands, 100 year floodplain boundary, and other drainage features;
	2. Wooded areas; and
	3. Other appropriate physical features.
d.	Loading, unloading, salvage, and processing areas.
e.	Locations of fire hydrants or wells for fire fighting water supply; indicate flow capacities of hydrants, mains, and wells.
f.	Site surface material, e.g., asphalt, gravel, compacted earth, etc.

VI. OPERATOR CERTIFICATION			
I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.			
Operator Signature:			
Typed Name & Title:		Date:	

CIWMB 501 (9/02)

WASTE TIRE FACILITY
ENVIRONMENTAL INFORMATION
(THIS IS NOT A CEQA DOCUMENT)

The following information will aid in the environmental review of your application as required by the California Environmental Quality Act (CEQA). IN ORDER FOR YOUR APPLICATION TO BE ACCEPTED AS COMPLETE, ANSWERS TO THE QUESTIONS LISTED BELOW MUST BE COMPLETED TO THE BEST OF YOUR ABILITY. Failure to answer all questions may result in your application being deemed incomplete and returned to you, causing delays in processing. If you need more space, attach additional pages. Additional information may be required from you to clarify the information requested in this form.

GENERAL INFORMATION (please print or type)								**SWIS #:**	
Facility Name:									
Facility Operator's Name:									
Mailing Address:									
City:		County:		State:		Zip:		Phone:	
Project Address (if different from operator):									
City:		County:		State:		Zip:		Phone:	

EXISTING WASTE TIRE FACILITIES
An existing waste tire facility is a facility which received, stored, or accumulated waste tires, or upon which waste tires were discarded, on January 1, 1990 (PRC 42808(a)).
Is the application for an existing waste tire facility: ☐ No ☐ Yes
If Yes, indicate all changes in the design and operation of the facility that occurred between January 1, 1990, and the date of submittal of this permit application:

PROJECT DESCRIPTION
Provide a brief description of your project, including but not limited to, site acreage, type of construction activity, structures to be built, and project operation:

CIWMB 502 (9/02)

ENVIRONMENTAL INFORMATION
Page 2 of 4

PROJECT DESCRIPTION CON'T			
Discuss all items checked Yes or Maybe and include as attachments to your submittal.			
	Yes	No	Maybe
Substantial alteration of ground contours?	☐	☐	☐
Change in scenic views or vistas from existing residential areas or public lands or roads?	☐	☐	☐
Generation of significant amounts of solid waste or litter?	☐	☐	☐
Changes in dust, ash, smoke, fumes, or odors in vicinity?	☐	☐	☐
Alteration of existing drainage patterns?	☐	☐	☐
Facility sited on sloped terrain?	☐	☐	☐
Use or disposal of potentially hazardous materials, such as flammables, explosives, or toxic substances?	☐	☐	☐
Substantial change in demand for municipal services (police, fire, water, vector control, sewage, etc.)?	☐	☐	☐
Proximity to wetlands, drainage, or bodies of water?	☐	☐	☐

GOVERNMENTAL REQUIREMENTS			
Before a final decision can be made on your Waste Tire Facility Permit Application, we must consider, as a responsible agency, the information contained in an environmental document prepared in compliance with the requirements of the CEQA. If an environmental document has been prepared for your project by another agency, we must consider it. If one has not been prepared, a determination must be made as to who is responsible for the preparation of the environmental document for your project. The following questions will aid us in the determination.			
Contact your city/county planning or public works department for the following information:			
Assessor's Parcel Number(s):			
County Zoning Designation:			
Is the project site consistent with the jurisdiction's Zoning designation?	☐ Yes ☐ No		
Is the project site consistent with the jurisdiction's General Plan?	☐ Yes ☐ No		
Was an environmental document prepared for the General Plan?	☐ Yes ☐ No		
If yes, what type of document was prepared?	☐ EIR ☐ Negative Declaration	Date:	
Was a Notice of Determination filed with city/county clerk?	☐ No ☐ Yes	If Yes, attach a copy.	
Will the city/county have to issue any permits or approvals for your project?			
☐ No			
☐ Yes	If Yes, check appropriate box:		
☐ Grading Permit	☐ Zoning Change	☐ General Plan Change	
☐ Other:			

CIWMB 502 (9/02)

ENVIRONMENTAL INFORMATION
Page 3 of 4

GOVERNMENT REQUIREMENTS CON'T					
If any permits have been obtained, list permit type and permit number for each (attach additional pages if necessary):					
1. Permit Type:		Permit No:			
Contact:		Phone:		Date:	
Department:					
2. Permit Type:		Permit No:			
Contact:		Phone:		Date:	
Department:					
Are any additional state or federal permits required for your project? (e.g., Federal Regulatory Commission, U.S. Forest Service, Bureau of Land Management, Soil Conservation Service, Department of Water Resources (Division of Dam Safety), Reclamation Board, Coastal Commission, State Lands Commission, etc.). For each agency from which a permit is required, provide the following information (attach additional pages if necessary):					
1. Agency Name:		Permit:			
Contact:		Phone:		Date:	
2. Agency Name:		Permit:			
Contact:		Phone:		Date:	
Has your agency, or any permitting agency, prepared any environmental documents for your project?					
☐ Yes, Submit a copy of the latest environmental document with this application, including a copy of the notice of determination.					
☐ No, Will any environmental documents be prepared by any permitting agency, other than the CIWMB for your project?					
If No, explain:					
SCH #:		Name of Environmental Document:			
Note: *The final environmental document (including notice of determination) or notice of exemption must be submitted to the Board. Processing of your Waste Tire Facility Permit cannot proceed until such documents are submitted.*					

ENVIRONMENTAL SETTING
Describe the current land use of the facility and adjacent properties within 1,000 feet of the facility. If possible, attach photographs of these areas. Date and label photos.
On-site:
Adjacent Properties:

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ENVIRONMENTAL INFORMATION
Page 4 of 4

ENVIRONMENTAL SETTING CON'T			
Describe any existing vegetation at the facility and on adjacent properties. If any threatened or endangered species occur in the project area or on adjacent properties, identify the species and indicate how they will be impacted by the proposed project. These vegetation types should be shown in the photographs submitted.			
On-site:			
Adjacent properties:			
Describe existing wildlife at the facility and on adjacent properties. If any threatened or endangered species occur in the project area or on adjacent properties, identify the species and indicate how they will be impacted by the proposed project.			
On-site:			
Adjacent properties:			
What changes in the project site and surrounding area will occur or are likely to occur because of construction and operation of your project? Include in your answer such things as appropriate number and size/age of trees to be removed or areas of vegetation/brush removal; area or extent of trenching, grading, excavation, plowing, or road, dam or building construction; etc.			
Have any archeological reports been prepared for this project?			
☐ Yes	If Yes, Name of Report:		Date:
☐ No	If No, will you be preparing an archeological report to satisfy another public agency?		
	☐ No ☐ Yes	If Yes, Agency Name:	
Do you know of any archeological or historic sites located within the general project area?			
☐ No ☐ Yes	If Yes, explain:		

OPERATOR CERTIFICATION			
I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.			
Facility Operator or Agent Signature:			
Typed Name & Title:		Date:	

CIWMB 502 (9/02)

WASTE TIRE FACILITY
EMERGENCY RESPONSE PLAN

I. GENERAL INFORMATION (please print or type)												SWIS #:	
Facility Name:													
Facility Mailing Address:													
City:		County:		State:		Zip:		Phone:					
Facility Operator's Name:													
Mailing Address:													
City:		County:		State:		Zip:		Phone:					
Property Owner's Name (if different from operator):													
Mailing Address:													
City:		County:		State:		Zip:		Phone:					

II. EMERGENCY CONTACT LIST

List the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency:

	Name	Phone
Facility Owner:		
Facility Operator:		
Local Fire Authority:		
Local Environmental Health Dept:		
Regional Water Quality Control Board:		
Any additional numbers that may be needed:		

III. EQUIPMENT

Emergency Response Equipment Available:

☐ 1. Minimum equipment required:

- ☐ One, dry chemical fire extinguisher — Weight:
- ☐ One, 2½ gallon water extinguisher
- ☐ One, pike pole at least 10 feet in length
- ☐ One round point and one square point shovel

OR

☐ 2. Equipment in lieu of the list above (attach fire authority approved requirements):

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EMERGENCY RESPONSE PLAN
Page 2 of 2

III. EQUIPMENT CON'T
Additional emergency response equipment present at the facility or available for use by the facility and how it is intended for use in case of emergency (attach local fire authority requirements, if any):
Attach a map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment (may include same map as required on Page 5 of the Operation Plan).

IV. EMERGENCY RESPONSE PROCEDURES
Describe the procedures that should be followed in the event of a fire, including procedures to contain and dispose of any pyrolytic oil generated by the combustion of tires and any water used to fight the fire:

CIWMB 503 (9/02)

WASTE TIRE FACILITY
CLOSURE PLAN

GENERAL INFORMATION (please print or type):										SWIS #:	
Facility Name:											
Facility Mailing Address:											
City:		County:		State:		Zip:		Phone:			
Facility Operator's Name:											
Mailing Address:											
City:		County:		State:		Zip:		Phone:			
Property Owner's Name (if different from operator):											
Mailing Address:											
City:		County:		State:		Zip:		Phone:			

PART A

The operator shall attach to this form a written cost estimate in accordance with Part C, in current dollars, of the cost of hiring a third party to close the major waste tire facility. Parts B and C shall be based on the maximum quantity of waste tires that the operator intends to store during the five year permit period as specified in the Operation Plan, Form CIWMB 501 (9/02).

PART B

The operator shall provide the following information to the Board prior to commencement of closure:

1. A closure schedule with a time period for completion (attach additional pages if necessary):

2. Details of the final disposition of the waste tires and waste tire products, in accordance with §18441(a). Include the name of each business that will receive the waste tires and the amounts. Provide the address and phone number for each business (attach additional pages if necessary):

3. A description of how the closure requirements of §18441 will be met (attach additional pages if necessary):

CIWMB 504 (9/02)

CLOSURE PLAN
Page 2 of 3

PART C

Closure Cost Estimate Worksheet

The estimate shall be completed by the operator/owner or duly recognized representative to include the following information:

1. The name, address, and telephone number of the authorized waste tire facility, where waste tires will be taken upon closure.

2. The cost estimate for a third party to cleanup the site along with the detail of how this estimate was calculated, as described below. The estimate shall be developed for the activities anticipated for closure, including disposition of waste tires and tire residues, equipment, labor and administration. Attach the cost estimate and all supporting documentation used in arriving at the closure cost estimate.

Calculate the Total Closure Cost Estimate in dollars for the waste tire facility being closed. You may use the formula provided below or an alternative formula that estimates the total cost to close the facility in accordance with applicable requirements.

➢ *Total Closure Cost Estimate (TCC) = 1.2 × (Transportation Cost + Destination Charge + Loading Cost + Administration Cost + Security Cost)* ➢

WHERE:

"*Transportation Cost*" represents the total cost of transportation for all loads of tires leaving the facility as well as the cost of the vehicles returning. The Transportation Cost shall be computed using the following formula:

Transportation Cost ($) = M × MT × TC

Factor "M" (miles) represents the total distance (round trip mileage) to be covered by a vehicle transporting a load, from the closing facility to a facility selected by the operator that would accept the waste tires in the form that they are, or will be stored (e.g., shreds vs. whole). The destination facility shall meet the criteria in §18441(a) of Article 5, Chapter 6, Division 7, Title 14, CCR.

Factor "MT" (number of round trips) represents the number of truck loads of waste tires that will be required during the cleanup. The number of truck loads for a particular size waste tire is determined by dividing the total number of waste tires that are of one size (e.g., passenger) by the number of waste tires of that size that can fit into one truck load. Fewer large over sized tires can be hauled by the same truck that is also used for passenger tires. "MT" should be based on the maximum number of loads that will be necessary to cleanup the site. This will be based on the maximum quantity of waste tires that the operator is seeking a permit to store as specified in the Operation Plan, CIWMB Form 501 (9/02); however the method of storage shall be taken into consideration. Fore example, if the operator intends to store only shredded waste tires in the future, but is presently storing whole waste tires, the calculations should be based on whichever storage condition requires the greatest cleanup cost.

Factor "TC " ($ per load per mile) represents the cost per mile to transport a load of waste tires. The cost includes the average expenses for transportation equipment, fuel, driver wages, tolls, and the vehicle's maintenance. This cost will vary based on the size of vehicle.

"*Destination Charge*" represents the total cost of tipping fees or disposal fees for all loads of waste tires transferred from the cleanup site to the destination facility. The Destination Charge shall be computed using the following formula:

Destination Charge ($) = MT × TF

Factor "MT" is described above.

Factor "TF" ($ per load) represents the cost to deposit waste tires at the destination facility. This may be a tipping fee or a disposal fee. If the fee is expressed in dollars per ton then this number must be multiplied by the weight of the load in order to yield dollars per load. The tipping fee should be based on the form of the waste tires (e.g., shreds vs. whole).

CIWMB 504 (9/02)

CLOSURE PLAN
Page 3 of 3

Closure Cost Estimate Worksheet Con't
"*Loading Cost*" represents the total cost of loading all loads of tires into vehicles at the closure facility and unloading the vehicles at the final destination. The Loading Cost shall be computed using the following formula: Loading Cost ($) = MT × LC Factor "MT" is described above. Factor "LC" ($ per load) represents the unit cost to load one vehicle with waste tires at the closing facility, and to unload the same waste tires at the final destination. This cost includes operational expenses, which covers wages for workers and pro rated expenses for rental or lease of equipment and machinery.
"*Administration Cost*" ($) represents the total cost of administration activities for the entire closure operation. This cost shall include the wages for personnel overseeing the cleanup activities and other operating expenses for the entire project.
"*Security Cost*" ($) represents the total cost of security arrangements for the entire closure operation. This is the cost to secure the site and restrict public access. This cost covers the expenses for the entire cleanup operation and includes installation of a site fence, installation or repair of lighting, and wages for security guards, etc.
Notes: 1. Total Closure Cost Estimate will vary according to the facility's design and operation as presented in the Operation Plan, Form CIWMB 501 (9/02). 2. All costs will be added and then multiplied by the contingency factor of 1.2 to estimate the Total Closure Cost for the cleanup. 3. Any deviations from the above formula must be explained. 4. Complete a separate closure cost estimate worksheet if the waste tires are to be transported to more than one point of destination.

OPERATOR CERTIFICATION:			
I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.			
Facility Operator or Agent Signature:			
Typed Name & Title:		Date:	

CIWMB 504 (9/02)

State of California
CIWMB FORM 607

California Integrated Waste Management Board

VOLUNTARY RESIDUAL PERCENTAGE REPORTING FORM

I. General Information	A. Name of applicant:
	B. Address:
	C. Telephone number:
II. General Facility/Activity	A. Name of facility:
	B. Address of facility:
	C. County:
	D. Telephone number:
III. Reporting Information	A. Period covered by report (month and year):
	B. Number of operating days in the period covered by report:
	C. The total amount of material (cubic yards or tons) received in the reporting period: (If the volume is presented in cubic yards then provide the conversion factor.)
	D. The total amount of material of C. that was diverted:
	E. The total amount of material of C. that was destined for disposal:
	F. E./C. X 100 = %

A copy of the records for the period covered by the report: ☐ is included ☐ is not included

The undersigned certifies that the information given and all attachments are true and accurate to the best of my knowledge and belief.

Signature (Operator or Agent for Activity/Facility):
Date:

Print name: Telephone number:

Title:

State of California
CIWMB 634 (2/03)

California Integrated Waste
Management Board

Farm and Ranch Solid Waste Cleanup and Abatement Grant
Application Cover Sheet

Applicant:	
Mailing Address:	
City & Zip Code:	County:

Primary Contact (Name & Title):	
Phone:	Fax:
Email Address:	

Assembly District(s):
Senate District(s):

☐ Request for Grant Funds ☐ Request for Reimbursement Grant

Brief Description of Project (3-5 Sentences):

Total Grant Request: $

Certification:

I declare, under penalty of perjury, that all information submitted for the CIWMB's consideration for allocation of grant funds is true and accurate to the best of my knowledge.

Signature of person as authorized in the resolution: _____ Date: _____

Type or print name and title: _____

State of California
CIWMB 634 (2/03)

California Integrated Waste
Management Board

INSTRUCTIONS FOR APPLICATION COVER SHEET

Applicant
This is the name of the entity that is submitting the application, e.g. City of Anaheim, Code Enforcement Agency or Santa Clara County Local Enforcement Agency

Primary Contact
This person is responsible for carrying out the day-to-day management and implementation of the project. All CIWMB correspondence will be directed to this individual.

Assembly and Senate Districts
List the district numbers for all districts affected by the proposed project.

Request for Grant Funds/Request for Reimbursement Grant
Indicate if request is for funds to clean up a site (Request for Grant Funds) or to reimburse for illegal disposal site previously remediated. (Request for Reimbursement Grant).

Brief Description of Project
Include a three to five sentence summary of the proposed project. Include the number of sites to be remediated.

Total Grant Request
The total number of dollars being requested from the CIWMB rounded to the nearest dollar. Do not include applicant contributions or in-kind services.

Certification/Signatures
Please select the designated signature authority carefully because only the person in the designated position will be able to sign the Grant Agreement Form and Payment Request Form.

State of California
CIWMB 635 (2/03)

California Integrated Waste
Management Board

Farm and Ranch Solid Waste Cleanup and Abatement Grant

Site Characterization Form

Name of Site:
Parcel Number:
SWIS #:
Location:
Zoning:
Owned By:
Owners Mailing Address:

General Description of Site (History/Background):

Enforcement Status:

☐ No Enforcement Action has been taken.

☐ The following Enforcement Action has been taken:

Date	Enforcement Action

Owner Responsibility:

Site Assessment					
Provide estimate of waste types. Specify units (cubic yards, gallons, number, etc) and quantity					
Waste Characterization:	Unit	Quant.	Industrial		
Household Waste:			Household Hazardous Waste		
Appliances:			Liquid		
Tires:			Agricultural Waste		
Automotive/metal:			Electronic Waste (TVs, computers)		
Construction/Debris:			Other		

Dimensions of Disposal Area:	long X wide X high
Approximate amount of waste:	cubic yards

Land Use	Within 1000 Ft of the Waste	Within 1 Mile of the Waste
Rural residential: Density of 1 home per acre or less	☐ YES ☐ NO	☐ YES ☐ NO
Residential: Density of 2 homes per acre or more	☐ YES ☐ NO	☐ YES ☐ NO
Surface Water Bodies: (circle one) Lakes, rivers, streams (seasonal and year around)	☐ YES ☐ NO	☐ YES ☐ NO
Water Supply Wells: (circle one) (potable / non-potable)	☐ YES ☐ NO	☐ YES ☐ NO
Environmentally Sensitive Area: (explain below)	☐ YES ☐ NO	☐ YES ☐ NO
Planned Improvements (explain below)	☐ YES ☐ NO	☐ YES ☐ NO

Land Use Explanation:

Soil Type (check appropriate soil type) ☐ Clay, silt, loam (low permeability) ☐ Sand, pebble (medium permeability) ☐ Gravel, cobble, (high permeability):
Mean annual precipitation (Yr. 24-Hr. (in)
Estimated separation between waste and ground water (ft):
Is the waste area within a 100-year flood plain? ☐ Yes ☐ No

State of California
Integrated Waste Management Board CIWMB–643 (NEW 4/2002)

Clean Up Plan

General Information: *(please print or type)*

Site Name:

Address:

Phone:

Site Operator Name:

Employee in Charge of
Operations on Site:

Mailing Address:

Phone:

Property Owner Name:

Mailing Address:

Phone:

PART A

The operator shall attach to this form a written cost estimate in accordance with Part C, in current dollars, of the cost of hiring a third party to clean up the site. Parts B and C shall be based on the maximum quantity of debris to be stored on site.

PART B

The operator shall provide the following information to the board prior to the commencement of the clean up:

1. A clean up schedule with a time period for completion
2. Details of the final disposition of the debris. Include the name of each business that will receive the debris and the amounts. Provide also the address and phone number for each business.

PART C
CLEAN UP COST
ESTIMATE WORKSHEET

The estimate shall be completed by the operator or duly recognized representative to include the following information:

1) The name, address, and telephone number of the site where the debris will be taken.

2) The cost estimate for a third party to cleanup the site along with the detail of how this estimate was calculated, as described below. The estimate shall be developed for the activities anticipated for the clean up including disposition of the debris, equipment, labor and administration. Attach the cost estimate and all supporting documentation used in arriving at the clean up cost estimate.

Calculate the Total Clean Up Cost Estimate in dollars for the operation or facility being cleaned up using the following formula:

Total Clean Up Cost Estimate (TCUC) = 1.2 × (Transportation Cost + Destination Charge + Loading Cost + Administration Cost + Security Cost)

Where:

"Transportation Cost" represents the total cost of transportation for all loads of debris leaving the site as well as the cost of the vehicles returning. The transportation cost shall be computed using the following formula:

Transportation Cost ($) = M × MT × TC

Factor "M" (miles) represents the total distance (Round Trip Mileage) to be covered by a vehicle transporting a load, from the site being cleaned to a facility selected by the operator that would accept the debris in the form that they are, or will be stored.

Factor "MT" (number of round trips) represents the number of truck loads of debris that will be required during the cleanup. The number of truck loads for a particular clean up is determined by dividing the total tonnage of debris by the tonnage of debris that can fit into one truck load. "MT" should be based on the maximum number of loads that will be necessary to clear the site.

Factor "TC" ($ per load per mile) represents the cost per mile to transport a load of debris. The cost includes the average expenses for transportation equipment, fuel, driver wages, tolls, and the vehicles maintenance. This cost will vary based on the size of vehicle.

The "Destination Charge" represents the total cost of tipping fees or disposal fees for all loads of debris transferred from the cleanup site to the destination facility. The Destination Charge shall be computed using the following formula:

Destination Charge ($) = MT × TF

Factor "MT" is described above.

Factor "TF" ($ per load) represents the cost to deposit the debris at the destination facility. This may be a tipping fee or a disposal fee. If the fee is expressed in dollars per ton then this number must be multiplied by the weight of the load in order to yield dollars per load.

"Loading Cost" represents the total cost of loading all loads of debris in to vehicles at the site and unloading the vehicles at the final destination. "Loading Cost" shall be computed using the following formula:

Loading Cost ($) = MT × LC

Factor "MT" is described above.

Factor "LC" ($ per load) represents the unit cost to load one vehicle with debris at the clean up site, and to unload the same debris at the final destination. This cost includes operational expenses which cover wages for workers and pro rated expenses for rental or lease of equipment and machinery.

"Administration Cost" ($) represents the total cost of administration activities for the entire clean up. This cost shall include the wages for personnel overseeing the cleanup activities and other operating expenses for the entire project.

"Security Cost" ($) represents the total cost of security arrangements for entire clean up operation. This is the cost to secure the site and restrict public access. This cost covers the expenses for the entire cleanup operation and includes installations of site fence, installations or repair of lighting, and wages for security guards, etc.

Note: 1) All costs will be added and then multiplied by the contingency factor of 1.2 to estimate Total Clean Up Costs.

2) Any deviations from the above formula must be explained.

3) Complete a separate clean up cost estimate worksheet if the debris is to be transported to more than one point of destination.

OPERATOR CERTIFICATION

Operator certification: I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

Operator Signature Date

CA Uniform Waste and Used Tire Manifest

EXAMPLE 123

Blue or Black Ink Pen

State of California
CIWMB-647 (10/03)

INSTRUCTIONS ON BACK DO NOT TAPE, STAPLE OR DUPLICATE

California Integrated Waste Management Board.
PO Box 1259, Sacramento, CA 95812-1259

Manifest Number

M4-2054220

By signing this CA Uniform Waste and Used Tire Manifest, the signer(s) requests that the information provided on this form will be considered confidential, proprietary and/or a trade secret. In accordance with Title 14, CCR, Section 17041 et seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number provided on this manifest.

PART I: TO BE COMPLETED BY TIRE HAULER **PLEASE PRINT FIRMLY**

☐ Pick Up ☐ Delivery

Please complete if outside California

☐ Import/Export

State/Country

Hauler

Business Name

Address

City, State, Zip

Hauler's Business Phone (include area code) ( ) -

Load Date (MM/DD/YY) / /

Log Number L -

Hauler Exemption (if applicable)

☐ Government ☐ LEA Exempt

☐ Agriculture ☐ Common Carrier/ Back Haul

License Plate Number **State** **Decal Number** 0 -

Indicate (if applicable)

☐ In Transit ☐ Unregistered Hauler

I certify that under penalty of perjury under the laws of the State of California that the information provided above is true and correct. In addition, I am aware that falsification of this information may result in suspension, revocation, or denial of renewal of the Waste Tire Hauler Registration pursuant to Public Resources Code section 42960 and may result in civil penalties up to $25,000 per day, per violation or administrative penalties up to $5,000 per violation per day as described in Public Resources Code section 42962.

Driver's Name (print) **Driver's Signature** **Date**

PART II: TO BE COMPLETED BY REPRESENTATIVE OF TIRE DEALER OR WASTE TIRE GENERATOR OR END-USE FACILITY. USE ACTUAL LOCATION WHERE THE TIRES ARE PICKED-UP OR DROPPED OFF. **PLEASE PRINT FIRMLY**

Business Name

Facility's Business Phone (include area code) ( ) -

Number & Street Address

City **State** **Zip Code**

☐ Address Same As Hauler

☐ Change Of Address

Tire Program ID **Site Suffix** -

Load Type (check only one) **Load Amount**

☐ Whole Tire Count ☐ Weight in Pounds

☐ Volume Cubic Yards ☐ Weight in Tons

Whole Numbers only for Whole Tire Count . Decimal

Optional Data

Passenger Amount . Oversize Amount .

Truck Amount . Other Amount .

Intended Use

☐ Retread/Reuse ☐ Recycle ☐ Fuel ☐ Disposal/Landfill

Comment Area

I certify that under penalty of perjury under the laws of the State of California that the information provided above is true and correct. In addition, I am aware that falsification of this information may result in civil penalties up to $25,000 per day, per violation or administrative penalties up to $5,000 per violation per day as described in Public Resources Code section 42962.

Representative Name (print) **Representative's Signature** **Date** 26187

CA Uniform Waste and Used Tire Trip Log

EXAMPLE 123

Blue or Black Ink Pen

California Integrated Waste Management Board
PO Box 1259, Sacramento, CA 95812-1259

State of California
CIWMB-648 (01/04)

INSTRUCTIONS ON BACK DO NOT TAPE, STAPLE OR DUPLICATE

Log Number L 5 - 1 4 4 4 3 7 2

Master Log Number L -

Decal Number 0 -

Initial Trip Date (MM/DD/YY) / /

For logs that continue onto more than one page.

Hauler Business Name

Address

City, State, Zip

☐ Change Of Address

Hauler's Business Phone (include area code) ( ) -

By signing this CA Uniform Waste and Used Tire Trip Log, the signer(s) requests that the information provided on this form will be considered confidential, proprietary and/or a trade secret. In accordance with Title 14, CCR, Section 17041 et seq., if a request is made for disclosure of this information, the CIWMB will contact the signer(s) of this form at the address and telephone number provided on this manifest.

Manifest Number		Load Type		Load Amount (Decimal)
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.
M -	Pickup / Delivery	☐ Whole Tire (Count) ☐ Weight (Lbs.) ☐ Volume (Cu. Yds.) ☐ Weight (Tons)		.

I certify under penalty of perjury under the laws of the State of California that the information provided above is true and correct. In addition, I am aware that falsification of this information may result in suspension, revocation, or denial of renewal of the Waste Tire Hauler Registration pursuant to Public Resources Code section 42960 and may result in civil penalties up to $25,000 per day, per violation or administrative penalties up to $5,000 per violation per day as described in Public Resources Code section 42962.

Please indicate if applicable: ☐ Load in transit

Page of

Driver's Name (print)

Driver's Signature **Date** 46058

CIWMB 1000

NOTICE OF DESIGNATION
OF LOCAL AGENCY
(14 CCR SECTION 18051)

_____
(Name of Agency)

_____
(Street Address)

_____
(City) (State) (Zip)

_____
(Date)

TO: CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

PLEASE TAKE NOTICE that the _____ has
(Name of Local Agency)
been designated as the local agency in:

_____
_____ on _____
(County, City, or Special District) (Date)

( ) Attached is a sheet listing additional jurisdictions:

1. The designation was made in accordance with California Public Resources Code Section 43203, using the following procedure:

   a. ( ) The local agency was designated by the County Board of Supervisors, and was approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county;

   b. ( ) A joint exercise of powers agreement pursuant to Government Code Section 6500, was formed as referenced in Public Resources Code Section 43203(b);

   c. ( ) The local agency was designated by the _____ since the
   (City)
   city has decided to designate a separate enforcement agency;

   d. ( ) The County Board of Supervisors designated the local agency for the unincorporated areas of the county.

2. The above designation _____ in specific accordance with the designation indicated in the County-wide Integrated Waste
   (is) (is not)
   Management Plan.

3. The following are exceptions to our territorial jurisdiction shown in the first paragraph of this NOTICE: (Please include a map clearly identifying the jurisdictional boundaries)

   _____
   _____
   _____

4. The name and address of the governing body of this local agency is:

   _____
   (Name)

   _____
   (Street Address) (City) (State) (Zip Code)

   _____
   (Telephone Number)

5. Name and address of the hearing panel or hearing officer of this local agency is/are:

_____
(Name(s))

_____
(Street Address) (City) (State) (Zip Code)

(___)_____
(Telephone Number)

6. The person responsible for direction, or management, of the local agency and its designated persons are:

_____
(Name of Local Enforcement Agency Program Manager)

_____
(Telephone No.)

_____
(Name of Contact Person)

_____
(Telephone No.)

7. All resolutions and other documents relevant to compliance with Public Resources Code Section 43203, and Title 14 California Code of Regulations Sections 18051 and 18052, have been certified and are enclosed.

8. The undersigned certifies that the designated local agency is not the operating unit for any solid waste handling or disposal operation, solid waste facility, or disposal site in the designated jurisdiction.

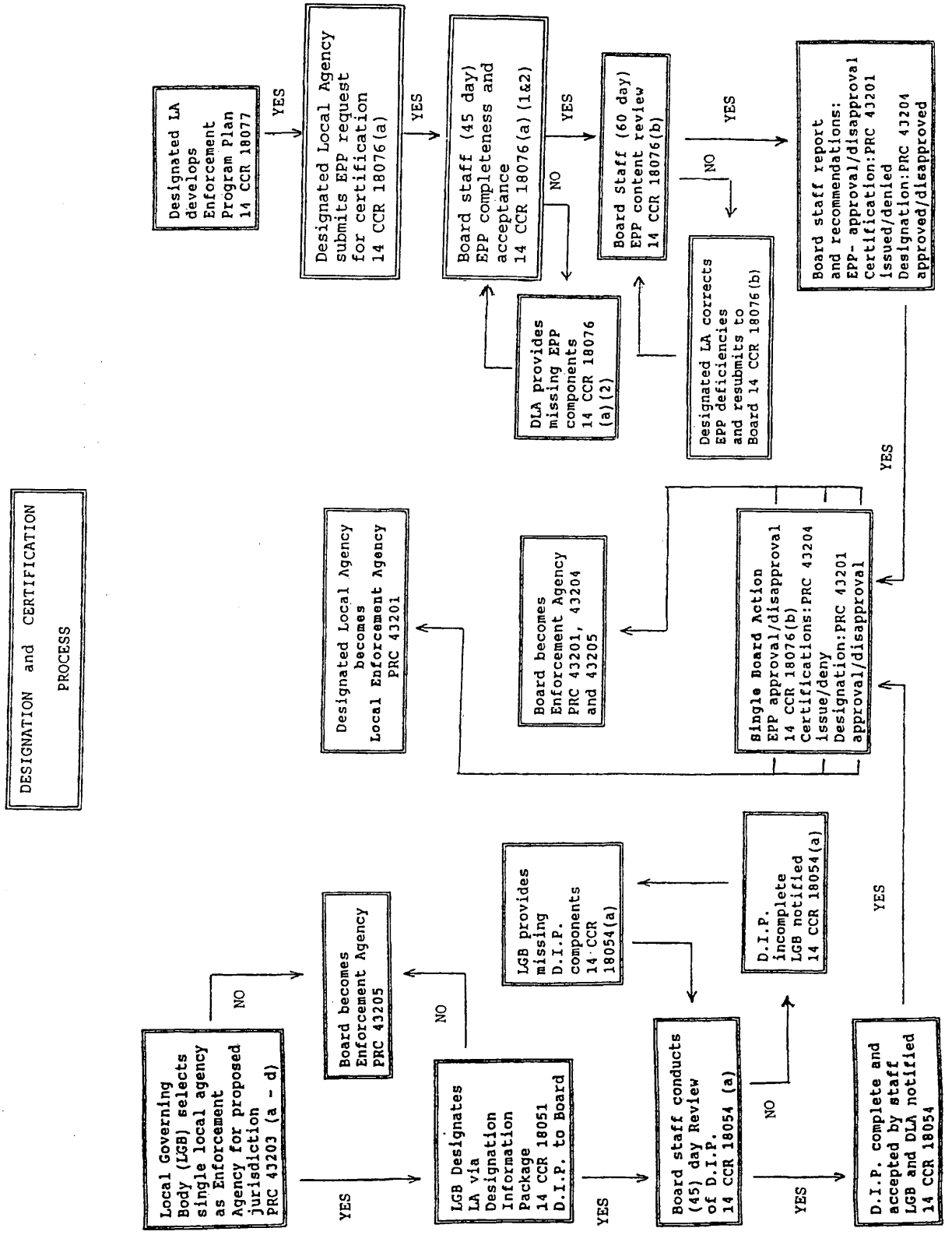
9. Attached is a listing of every permitted, closed, abandoned, exempt, illegal, and inactive solid waste facility and disposal site in the local agency jurisdiction.

Signed by _____
(Local Governing Body or Authorized Representative)

_____
(Typed or Printed Name)

_____
(Title)

NOTE: New information necessary to update the contents of this form, other than the designated agency or its jurisdiction, may be provided in letter format. Local governing body signature is not required for minor change(s).


DESIGNATION and CERTIFICATION
PROCESS
Local Governing Body (LGB) selects single local agency as Enforcement Agency for proposed jurisdiction PRC 43203 (a - d)
NO
YES
Board becomes Enforcement Agency PRC 43205
LGB Designates LA via Designation Information Package 14 CCR 18051 D.I.P. to Board
NO
YES
LGB provides missing D.I.P. components 14 CCR 18054(a)
Board staff conducts (45) day Review of D.I.P. 14 CCR 18054 (a)
NO
YES
D.I.P. incomplete LGB notified 14 CCR 18054(a)
D.I.P. complete and accepted by staff LGB and DLA notified 14 CCR 18054
YES
Designated LA develops Enforcement Program Plan 14 CCR 18077
YES
Designated Local Agency submits EPP request for certification 14 CCR 18076(a)
YES
Board staff (45 day) EPP completeness and acceptance 14 CCR 18076(a)(1&2)
NO
YES
DLA provides missing EPP components 14 CCR 18076 (a)(2)
Board Staff (60 day) EPP content review 14 CCR 18076(b)
NO
YES
Designated LA corrects EPP deficiencies and resubmits to Board 14 CCR 18076(b)
Board staff report and recommendations: EPP- approval/disapproval Certification:PRC 43201 Issued/denied Designation:PRC 43204 approved/disapproved
YES
Designated Local Agency becomes Local Enforcement Agency PRC 43201
Board becomes Enforcement Agency PRC 43201, 43204 and 43205
Single Board Action EPP approval/disapproval 14 CCR 18076(b) Certifications:PRC 43204 issue/deny Designation:PRC 43201 approval/disapproval
YES

State of California CIWMB FORM 5000 (revised 12/96) STANDARDIZED COMPOSTING PERMIT	California Integrated Waste Management Board
1. Facility/Permit Number (SWIS):	
2. Name of Facility:	Address/Location:
3. Local Enforcement Agency:	Address:
4. Signature of Local Enforcement Agency Approving Officer: 5. Please Print or Type Name and Title of Approving Officer:	6. Date of Signature:
7. Date Received by CIWMB:	
8. Signature of CIWMB Approving Officer: 9. Please Print or Type Name and Title of Approving Officer:	10. Date of Signature:
11. Date of Permit Issuance:	12. Permit Review Due Date:
The facility for which this permit has been issued shall only be operated in accordance with the description provided in the application pursuant to Section 18105.1 and Report of Composting Site Information pursuant to Section 17863.	

13. Legal Description of Facility: (description may be attached)

14. Findings:

a. This permit is consistent with standards adopted by the California Integrated Waste Management Board pursuant to Public Resources Code Section 44010.
b. An environmental determination (i.e., Notice of Determination), has been filed with the State Clearing House (#_____) for all facilities that are not exempt from CEQA and documents pursuant to Public Resources Code Section 21081.6.
c. The following authorized agent _____ has made the determination that the facility is consistent with the applicable general plan, as required by Public Resources Code, Section 50000.5(a).
d. The operation of this facility is consistent with the [ ] County Solid Waste Management Plan (50000), or the [ ] County Integrated Waste Management Plan (50001).
e. The design of the proposed facility or the design and operation of an existing facility, as appropriate, is in compliance with State Minimum Standards for Composting Operations Regulatory Requirements, Title 14, Division 7, Chapter 3.1 (commencing with Section 17850) of the California Code of Regulations.

15. In addition to this permit, the facility may have one or more of the following permits or restrictions on its operations. Persons seeking information regarding these items should contact the appropriate regulatory agency.

Report of Composting Site Information
State Water Resources Control Board/Regional Water Quality Control Board Waste Discharge Requirements or Waiver
National Pollutant Discharge Elimination System (Stormwater) Permit
Fire Protection District Findings
Mitigation and Monitoring Measures (pursuant to the California Environmental Quality Act)
Conditional Use Permit
California Environmental Quality Act Environmental Impact Report or Negative Declaration
Air Pollution Permits and Variances
Coastal Commission Restrictions

16. Terms and Conditions:

a. The operator shall comply with applicable state minimum standards set forth in Title 14, Division 7, Chapter 3.1 (commencing with Section 17850) of the California Code of Regulations.

b. The operator shall comply with all mitigation and monitoring measures developed in accordance with a certified environmental document filed pursuant to Public Resources Code Section 21081.6.

c. The operator shall maintain a copy of this standardized permit at the facility to be available at all times to facility, enforcement agency, or board personnel.

d. The operator shall maintain and make available for inspection by the enforcement agency and board all correspondence and reports provided to other regulatory agencies that have jurisdiction over the facility.

e. The operator shall be responsible for identifying the types of feedstocks accepted for processing.

f. The design capacity of _____ cubic–yards of material undergoing the composting process shall not be exceeded. This requirement does not include on–site storage of feedstock or stabilized compost.

g. Additional clarifying information concerning the design and operation of the composting facility shall be furnished upon written request of the enforcement agency, or the board.

h. The operator shall notify the enforcement agency, in writing, within thirty (30) days of receipt of the test results, of any noncompliance with Sections 17868.2 and 17868.3 of Chapter 3.1, Division 7, Title 14, of the California Code of Regulations.

i. Unless specifically permitted or allowed under Title 14, Division 7, Chapter 3.1 of the California Code of Regulations, the facility shall not accept the following materials:

(1) Designated wastes as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations

(2) Hot Ashes/Burning materials

(3) Medical wastes as defined in Section 25023.2 of the Health & Safety Code

(4) Hazardous Wastes as defined in Section 25117 of the Health & Safety Code

(5) Liquid Wastes as defined in Title 23, Chapter 15, Section 2601 of the California Code of Regulations (unless approved by RWQCB and the enforcement agency)

j. The following activities are prohibited:

(1) Scavenging

(2) Salvaging

(3) Discharge of wastes off–site

(4) Vector propagation or harborage

k. The facility, if located outside of a city, shall be maintained in compliance with the flammable clearance provisions, pursuant to Public Resources Code Section 44151.

Chapter 10. Solid Waste Cleanup Program

Article 1. Authority

§ 18900. Scope.

(a) Regulations contained herein are promulgated pursuant to Public Resources Code Article 2.5 of Chapter 2 of Part 7 of Division 30. The regulations implement the Solid Waste Cleanup Program, a program for the cleanup of solid waste at disposal sites and solid waste at codisposal sites where the responsible party(ies) either cannot be identified or is unable or unwilling to pay for timely remediation and where cleanup is needed to protect public health and safety and/or the environment.

(b) In implementing this program the Board is vested, in addition to its other powers, with all the powers of an enforcement agency under Division 30 of the Public Resources Code.

(c) In administering the program authorized by Public Resources Code section 48020 et seq. the Board may:

(1) Expend funds directly for remedial action;

(2) Provide loans to responsible parties who demonstrate the ability to repay state funds for remedial actions on solid waste disposal sites and codisposal sites;

(3) Provide matching grants to public entities for remedial actions on solid waste disposal sites and codisposal sites; and

(4) Provide grants to public entities for the abatement of illegal disposal sites.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48021(b), 48021(c) and 48023(b), Public Resources Code.

HISTORY

1. New chapter 10 (articles 1–7, sections 18900–18932), article 1 (section 18900) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 2. Definitions

§ 18901. Definitions.

For the purposes of this Chapter:

(a) "Abandoned site" means a site where no responsible party can be identified or located.

(b) "Agreement" means a memorandum of understanding between the Board and a local government.

(c) "Applicant" means a person or an entity applying for a loan, matching grant, grant, or remediation managed by the California Integrated Waste Management Board.

(d) "Board" means the California Integrated Waste Management Board.

(e) "Borrower" means an applicant whose loan application has been approved and who has executed a loan agreement.

(f) "Closed site," means a disposal site that has ceased accepting waste and was closed in accordance with applicable statutes, regulations, and local ordinances in effect at the time.

(g) "Codisposal site" means a hazardous substance release site listed pursuant to section 25356 of the Health and Safety Code where the disposal of hazardous substances, hazardous wastes, and solid waste have occurred.

(h) "Grant recipient" means an applicant whose grant application has been approved and who has executed a grant agreement pursuant to Public Resources Code section 48021(b).

(i) "Illegal disposal site" means:

(1) A site where unauthorized disposal of solid waste has taken place to the extent that cleanup may be required to protect public health and safety and/or the environment, and

(2) The site is not permitted and not exempt from obtaining a permit and is not closed or excluded from the requirement to obtain a Solid Waste Facilities Permit.

(j) "Local government" means a local public entity that is a county, city, district, or any other political subdivision deemed eligible by the Board, but does not include the State.

(k) "Nuisance" includes anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and affects at the same time an entire community, neighborhood, household or any considerable number of persons although the extent of the annoyance or damage inflicted upon an individual may be unequal and which occurs as a result of the storage, removal, transport, processing or disposal of solid waste.

(*l*) "Order" means an enforcement action taken by the enforcement agency or the board in the form of issuing a notice and order, a cease and desist order, cleanup or abatement order, or a corrective action order as authorized by Section 18304.

(m) "Person" includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, public or private school, college, or university, or any other entity whatsoever.

(n) "Remedial action" means any action to abate, prevent, minimize, stabilize, mitigate, or eliminate a threat to public health and safety and/or the environment.

(o) "Repayment amount" means the amount equal to the amount expended by the Board for cleanup, the Board's cost of contract administration, and an amount equal to the interest that would have been earned on the funds expended for cleanup.

(p) "Responsible party" means:

(1) Any individual person; trust; firm; joint stock company; Native American tribe; corporation, including a government corporation; partnership; joint venture; association; city; 0county; district; the state, including any department or agency thereof; or any department or agency of the United States to the extent authorized by federal law, who at the time of disposal of any solid waste owned the property;

(2) The present owner or operator of the site at which solid waste has been deposited;

(3) Any individual person; trust; firm; joint stock company; Native American tribe; corporation, including a government corporation; partnership; joint venture; association; city; county; district; the state, including any department or agency thereof; or any department or agency of the United States to the extent authorized by federal law who by contract or agreement disposed and/or transported solid waste to the site, or who otherwise arranged for the transportation to and/or disposal of solid waste at the site;

(4) Any individual person; trust; firm; joint stock company; Native American tribe; corporation, including a government corporation; partnership; joint venture; association; city; county; district; the state, including any department or agency thereof; or any department or agency of the United States to the extent authorized by federal law who was the owner or custodian of the solid waste that was deposited on the site.

(5) The term "responsible party," as defined above, may only be construed within the context of this Article and Public Resources Code sections 48020 et seq. and shall not be interpreted under any other local, state, or federal statute.

(q) "Responsible party is unable to pay" means:

(1) The responsible party does not currently, have the financial ability, as verified by independent audit, financial statements, or other documentation acceptable to Board, to pay the costs of remediation necessary to protect the public health and safety and/or the environment; or

(2) The responsible party does not have the legal power or authority to perform required site cleanup.

(r) "Responsible party is unwilling to pay" means: the responsible party has financial ability to pay for the costs of remediation necessary to protect public health and safety and/or the environment, has been is-

sued an enforcement order to perform remediation, and has refused to comply with the order.

(s) "Responsible party cannot be identified," means the responsible party cannot be identified or found after a search of public records, investigation, and consultation with other enforcement agencies.

(t) "Threat" or "threaten" means a condition creating a probability of substantial harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

(u) "Trust fund" means the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Public Resources Code section 48027 of Article 2.5 of Chapter 2 of Part 7 of Division 30.

(v) "Surplus Money Investment Fund" means the fund in which excess state moneys are invested until the money is needed for its intended purpose. The fund is administered by the state treasurer's office.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New article 2 (section 18901) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 3. Site Selection and Ranking Criteria

§ 18902. Site Eligibility.

Candidate sites may be eligible for funding if:

(a) The site is a solid waste disposal site, codisposal site, or illegal disposal site as defined in Section 18901;

(b) The responsible parties, either cannot be identified, located, or is unable or unwilling to pay for timely and proper remediation; and

(c) Remedial action is required to protect public health and safety and/or the environment.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020(b) and 48021(c), Public Resources Code.

HISTORY

1. New article 3 (sections 18902–18904) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18903. Site Prioritization.

(a) The Board shall prioritize sites for eligibility based on the following factors:

(1) The actual or potential degree of risk to public health and safety and/or the environment posed by conditions at the site as determined by a comparison with state minimum standards (27 CCR, Chapter 3, Subchapter 4, commencing with section 20510 and Subchapter 5, commencing with section 21099.

(2) The ability of the site owner and or responsible parties to promptly and properly remediate the site without monetary assistance;

(3) The ability of the Board to adequately remediate the site with available funds;

(4) The amount of contributions of money and/or in–kind services from local governments and responsible parties;

(5) The availability of other appropriate federal or state enforcement and/or cleanup programs to remediate the site.

(6) The ability to obtain site access for the proposed remediation.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020(b) and 48021(a), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18904. Eligible and Ineligible Remedial Actions.

(a) Remedial actions taken pursuant to the Solid Waste Cleanup Program shall, to the extent practicable, contribute to the efficient performance of any anticipated long–term remedial action with respect to the specific threat to public health and safety and/or the environment addressed under the program.

(b) Remedial actions that are appropriate for the use of funds include, but are not limited to: waste removal and disposal; security measures such as fences and warning signs; drainage controls; slope and foundation stabilization; excavation, consolidation, and capping of waste areas; field and laboratory testing; and installation of landfill gas and leachate control systems.

This list is not exhaustive and shall not prevent the Board from taking other necessary and appropriate actions and does not create a duty on the Board to take action at any particular time.

(c) Ineligible actions include, but are not limited to: closure as defined in Section 20164 of Title 27, Division 2 of the California Code of Regulations; ground water remediation; operation and maintenance of leachate, surface water, or vadose zone monitoring systems; closure and postclosure maintenance services; improvements to property for postclosure land uses; preparation of closure or postclosure maintenance plans; removal, abatement, and cleanup or otherwise handling of only hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. section 9601(14)] not codisposed with nonhazardous solid waste.

(d) The remediation of landfill or disposal site fires pursuant to this chapter will only be eligible in situations where the fire is remediated as one part of a project approved by the Board under the applicable criteria for any other project approved for remediation under this program.

(e) Eligible activities regarding emergency actions at disposal sites pursuant to this chapter include technical assistance to local emergency response agencies. The Board may consider approval of funding of final site remediation pursuant to this chapter after the emergency response if all other applicable criteria are met.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 4. Loans to Local Governments

§ 18905. Purpose.

(a) The Board may make loans directly from the trust fund to local government to assist in site remedial actions. The loans shall be used to assist the Board in complying with Public Resources Code section 48020 et seq.

(b) The regulations contained in this Article set forth the requirements to apply for and receive loan funds from the trust fund.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New article 4 (sections 18905–18912) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18906. Loan Eligibility.

(a) Loans are available only to local governments that demonstrate:

(1) The site remediation is needed to protect public health and safety and/or the environment; and

(2) The ability to repay the loan and to pay for costs of remediation that exceeds the loan amount.

(b) Loan funds may be used only for those eligible costs pursuant to Section 18904.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18907. Loan Requirements.

Loans made pursuant to this Article shall be subject to the following requirements:

(a) The terms of any approved loan shall be specified in a loan agreement between the borrower and the Board. Notwithstanding any term of the agreement, any recipient of a loan that the Board approves shall repay the principal amount plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan.

(b) The Board shall not finance more than one million dollars ($1,000,000) per site.

(c) The term of any loan made pursuant to this Article shall be not more than 20 years.

(d) The money from any loan repayments and fees, including, but not limited to, principal and interest payments, fees and points, administrative fees, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions shall be deposited in the trust fund.

(e) The Board or the Department of Finance may audit the recipient's records regarding moneys received pursuant to this Article.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(c)(3), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18908. Loan Application Process.

(a) Applications from local governments for loan funds shall be accepted on a continuous basis.

(b) Jurisdictions with eligible sites shall submit an application package which shall include but is not limited to the following information:

(1) A copy of the grant deed with legal description. The applicant must be the owner or co–owner of the site, or the Sponsor (e.g. Redevelopment Agency) of eligible cleanup of privately owned or leased lands within their jurisdiction.

(2) Substantiation of threat to public health and safety or the environment by attaching applicable regulatory agency investigation documents or enforcement orders, solid waste assessment tests (SWAT) reports, or certified environmental assessment reports.

(3) A detailed Scope of Work and Cost Estimate prepared by a registered civil engineer.

(4) A document showing compliance with the California Environment Quality Act (e.g. Notice of Exemption, Initial Study/Negative Declaration or Environment Impact Report).

(5) Demonstrate the need for the requested loan funds by attaching the applicant's annual financial operating statements for the last three years and interim (within 90 days) independent audits, and other evidence of financial condition. Each statement must be certified by the original signature of the person completing the application.

(6) Identify and provide evidence of sources of funds to repay the loan and pay for site cleanup costs that exceed the loan amount, certified by the original signature of the person completing the application. In lieu of collateral, the applicant must identify a guaranteed revenue source which will be dedicated to repay the loan.

(7) A copy of an adopted resolution from the governing board or council authorizing submittal of the application, certifying availability of local funds needed to complete the cleanup, and identifying the title and name of the individual authorized to execute any agreements, contract, and requests for payment to carry out the project.

(8) Applications from joint power authorities consisting of several cities and/or counties must include a signed copy of a written agreement between the governing bodies authorizing the loan applicant to act on their behalf.

(9) Name, address, telephone number, and fax number of the applicant

(c) All materials submitted shall become property of the Board and will be retained for a minimum of three years.

(d) Documents required in subsection (b) of this section shall be submitted to the principal place of business of the California Integrated Waste Management Board.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18909. Preliminary Review of Loan Applications.

Upon receipt, Board staff shall review each local government application to determine whether the application is complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the local government with one of the following responses:

(a) The local government application is incomplete with specification of the steps, if any, that the applicant may take to correct the identified deficiencies. Applications that fail to supply the required information shall be rejected from consideration for a loan; or

(b) The applicant is ineligible for a loan pursuant to Section 18906 of this Article; or

(c) The applicant is eligible for a loan pursuant to Section 18906 of this Article, the application is complete, and the application shall be evaluated by Board staff.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18910. Review of Complete Loan Applications and Board Approval.

Upon determination that an application is complete, Board staff shall review each application and prepare a summary of findings. Applications, which meet the following criteria shall be considered and a decision shall be made by the Board within ninety (90) days of the determination that the application is complete:

(a) The source of repayment is sufficient for the requested loan amount; and

(b) The applicant has adequately demonstrated the appropriateness of the loan for use in the project as specified pursuant to Section 18906(c) of this Article.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18911. Loan Agreement.

(a) If the Board approves the loan, the applicant and the Board shall enter into a written loan agreement that identifies and ensures compliance with the terms and conditions specified in Section 18907 of this Article and any other special conditions or terms that the Board deems necessary on a case–by–case basis.

(b) All funds shall be disbursed and repaid pursuant to the terms of the loan agreement.

(c) The borrower shall obtain prior written approval from the Board, or its designated representative, for any changes in the loan agreement. All requests shall include a description of the proposed change(s) and the reason(s) for the change(s).

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18912. Financial Condition Notification.

(a) During the application process and any time thereafter, it shall be the responsibility of the applicant or borrower to immediately notify the Board of any change in financial condition that would make them:

(1) Financially able to perform remedial action without Trust Funds; or

(2) Unable to repay the loan; or

(3) Unable to pay for remedial action costs that exceed the loan amount.

(b) Any such changes in conditions or failure to notify the Board of any such changes in conditions may nullify eligibility for use of Trust Funds.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000. No. 37).

Article 5. Grants to Public Entities to Abate Illegal Disposal Sites

§ 18913. Purpose.

(a) The Board may make grants directly from the trust fund to public entities to assist in site remediation actions. Grants shall be used to assist the Board in complying with Public Resources Code section 48020 et seq.

(b) The regulations contained in this Article set forth the requirements to apply for and receive grant funds from the trust fund.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public Resources Code.

HISTORY

1. New article 5 (sections 18913–18919) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18914. Grant Eligibility.

(a) Grants are available to public entities that demonstrate the following:

(1) The illegal disposal site remedial action is necessary to protect public health and safety and/or the environment; and

(2) The public entity is authorized by resolution of their local governments to file an application with the Board for grant funds and enter into and execute a grant agreement.

(b) Grants to public entities may only be used for remedial actions at illegal disposal sites within their jurisdiction.

(c) Grant funds may be used only for those eligible costs pursuant to Section 18904.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18915. Grant Requirements.

Grants made pursuant to this Article shall be subject to the following requirements:

(a) The terms of any approved grant shall be specified in a grant agreement between the grant recipient and the Board.

(b) The Board shall not finance more than five hundred thousand dollars ($500,000) per site.

(c) The Board or the Department of Finance may audit the recipient's records regarding moneys received pursuant to this Article.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(c)(3), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18916. Grant Application Process.

(a) Applications for grant funds shall be accepted on a continuous basis.

(b) Public entities with eligible sites shall submit an application package which shall include but is not limited to the following information:

(1) Name of the site owner and a copy of the owner's grant deed with legal description.

(2) Substantiation of actual or potential threat to public health and safety or the environment by attaching applicable regulatory agency investigation documents or enforcement orders, solid waste assessment tests (SWAT) reports, or certified environmental assessment reports.

(3) Preliminary Work Plan and Cost Estimate prepared by a registered civil engineer. If local government resources to be reimbursed with grant funds are proposed for site cleanup, costs shall be determined in accordance with procedures in State Department of Transportation Standard Specifications Section 9–1.03, Force Account Payment, except that overhead and profit markups to direct cost of labor, materials, equipment or subcontractors will not be allowed.

(4) Proof of Compliance with the California Environmental Quality Act (e.g. Notice of Exemption, Initial Study/Negative Declaration, or Environmental Impact Report).

(5) Evidence of owner's inability to pay for cost of site cleanup (e.g. owner cannot be identified or found, owner is unable to pay for site cleanup). Attach a copy of report of records search, financial statements or audits of owner, and other documents to substantiate need.

(6) A copy of the adopted resolution from the governing board or council authorizing the public entity to file an application and enter into and execute a grant agreement, and naming the title of the individual authorized to execute any agreements, contracts, and requests for payment.

(7) Name, address, telephone number, fax number of the applicant.

All materials submitted shall become the property of the Board and will be retained for a minimum of three years.

(c) Documents required in subsection (b) shall be submitted to the principal place of business of the California Integrated Waste Management.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18917. Preliminary Review of Grant Applications.

Upon receipt, Board staff shall review each application to determine whether the application is complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the applicant with one of the following responses:

(a) The application is incomplete with specification of the deadline and steps, if any, which the applicant may take to correct the identified deficiencies. Following receipt of such notice, applicants that fail to supply the required information or meet any specified deadline shall be rejected from consideration for a grant.

(b) The applicant is ineligible for a grant based on failure to meet criteria under Section 18914 of this Article; or

(c) The applicant is eligible for a grant pursuant to Section 18914 of this Article, that the application is complete, and that the application shall be evaluated by Board staff.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18918. Review of Complete Grant Applications and Board Approval.

Upon determination that an application is complete, Board staff shall review each application and prepare a summary of findings. Applications, which meet the following criteria, shall be considered and a decision shall be made by the Board within ninety (90) days of the determination that the application is complete:

(a) The Local Enforcement Agency shall provide ongoing inspection and enforcement action to prevent recurring use of the illegal disposal site;

(b) The applicant has adequately demonstrated the appropriateness of the grant for use in the project as specified pursuant to Section 18904 of this Chapter; and

(c) If the applicant is other than the Local Enforcement Agency, a copy of the complete application shall be sent to the Local Enforcement Agency's office.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18919. Grant Agreement.

(a) If the Board approves the grant, the applicant and the Board shall enter into a written grant agreement that identifies and ensures compliance with the terms and conditions specified in Section 18915 and any other special conditions or terms that the Board may deem necessary.

(b) All funds shall be disbursed pursuant to the terms of the grant agreement.

(c) The grant recipient must obtain prior written approval from the Board, or its designated representative, for any changes in the grant agreement. All requests must include a description of the proposed change(s) and the reason(s) for the change(s).

(d) The Board may terminate any grant in whole, or in part, at any time prior to the date of completion whenever it is determined by the Board that the recipient has failed to comply with the terms of the grant agreement. The Board shall notify the recipient in writing of the reasons for the termination of the grant and the effective date of the termination within five working days of the determination to terminate.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 6. Matching Grants to Public Entities

§ 18920. Purpose.

(a) The Board may make matching grants directly from the trust fund to public entities to assist in site remedial actions. The grants shall be used to assist the Board in complying with Public Resources Code section 48020 et seq.

(b) The regulations contained in this Article set forth the requirements to apply for and receive matching grant funds from the trust fund.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New article 6 (sections 18920–18927) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18921. Matching Grant Eligibility.

(a) Matching grants are available only to public entities that demonstrate the following:

(1) The site remedial action is needed to protect public health and safety and/or the environment; and

(2) The ability to pay the costs of remedial action that exceed the grant amount.

(b) Matching grant funds may be used only for those eligible costs pursuant to Section 18904.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18922. Matching Grant Requirements.

Matching grants made pursuant to this Article shall be subject to the following requirements:

(a) The terms of any approved grant shall be specified in a matching grant agreement between the matching grant recipient and the Board.

(b) The Board shall finance up to and not more than 50 percent of the cost of any project up to a maximum of seven hundred and fifty thousand dollars ($750,000) per site.

(c) The Board or the Department of Finance may audit the recipient's records regarding moneys received pursuant to this Article.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48027(c)(3), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18923. Matching Grant Application Process.

(a) Applications for matching grant funds shall be accepted on a continuous basis.

(b) Jurisdictions with eligible sites shall submit an application package which shall include but is not limited to the following information:

(1) A copy of the grant deed with legal description.

(2) Substantiation of threat to public health and safety or the environment. Attach applicable regulatory investigations or enforcement orders, solid waste assessment test (SWAT) reports, or certified environmental assessment reports.

(3) A detailed Scope of Work and Cost Estimate prepared by a registered civil engineer. Cost of eligible and ineligible work must be itemized separately. If local government resources to be reimbursed under this grant agreement are proposed for site cleanup, costs shall be determined in accordance with procedures in State Department of Transportation Standard Specifications Section 9–1.03, force Account Payment, except that overhead and profit markups to direct cost of labor, materials, equipment, or subcontractors will not be allowed.

(4) Proof of compliance with the California Environmental Quality Act (e.g. Notice of Exemption, Initial Study/Negative Declaration, or Environmental Impact Report).

(5) Demonstration of need for requested grant funds. Attach applicant's annual financial operating statements for last three years, independent audits, and other evidence of financial conditions.

(6) Identification of sources of funds to pay for local government match and project costs not eligible for matching grant included in the project.

(7) A copy of the approved resolution from the governing board or council authorizing submittal of the application, certifying availability of matching funds and funds for costs not eligible, and the naming title of the individual authorized to execute any agreements, contract, and requests for payment. This authorized individual will be the only person whose signature the Board will recognize. Applications from joint power authorities consisting of several cities and/or counties must include a signed copy of a written agreement between the governing bodies authorizing the grant applicant to act on their behalf.

(8) Name, address, telephone number, and fax number of the applicant.

All materials submitted will become property of the Board and will be retained for a minimum of three years.

(c) Documents required in subsection (b) shall be submitted to the principal place of business of the California Integrated Waste Management Board.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18924. Preliminary Review of Matching Grant Applications.

Upon receipt, Board staff shall review each application to determine whether the application is complete. Within thirty (30) days of receiving the application Board staff shall send a letter to the applicant with one of the following responses:

(a) The application is incomplete and specifying the deadline and steps, if any, which the applicant may take to correct the identified deficiencies. Following receipt of this notice, applicants that fail to supply the required information or meet any specified deadline shall be rejected from consideration for a grant; or

(b) The applicant is ineligible for a matching grant pursuant to Section 18921 of this Article; or

(c) The applicant is eligible for a matching grant pursuant to Section 18921 of this Article, that the application is complete, and that the application shall be evaluated by Board staff.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18925. Review of Complete Matching Grant Applications and Board Approval.

Upon determination that an application is complete, Board staff shall review each application and prepare a summary of findings. Applications, which meet the following criteria, shall be considered and a decision shall be made by the Board within ninety (90) days of the determination that the application is complete:

(a) The applicant's source of payment is sufficient to supply the amount of funds needed that exceed the matching grant amount; and

(b) The applicant has adequately demonstrated the appropriateness of the matching grant for use in the project as specified pursuant to Section 18902(c) of this Article.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(c), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18926. Matching Grant Agreement.

(a) If the Board approves the matching grant, the applicant and the Board shall enter into a written matching grant agreement that identifies and ensures compliance with the terms and conditions specified in Section 18923 and any other special conditions or terms that the Board may deem necessary on a case–by–case basis.

(b) All funds shall be disbursed pursuant to the terms of the grant agreement.

(c) The matching grant recipient must obtain prior written approval from the Board, or its designated representative, for any changes in the matching grant agreement. All requests must include a description of the proposed change(s) and the reason(s) for the change(s).

(d) The Board may terminate any matching grant in whole, or in part, at any time prior to the date of completion, whenever it is determined by the Board as a whole, that the recipient has failed to comply with the terms of the matching grant agreement. The Board shall notify the recipient in writing of the reasons for the termination of the matching grant and the effective date of the termination within five working days of the determination.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18927. Financial Condition Notification.

(a) During the application process and any time thereafter, it shall be the responsibility of the applicant or matching grant recipient to immediately notify the Board of any change in financial condition that would make them either:

(1) Financially able to perform remedial action without Trust Funds; or

(2) Unable to pay for remedial action costs that exceeds the matching grant amount.

(b) Any such changes in conditions and/or failure to notify the Board of any such changes in conditions may nullify eligibility for use of Trust Funds.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

Article 7. Board Managed Remediations

§ 18928. Purpose.

(a) The Board may decide to expend available moneys to perform any cleanup, abatement, or remedial action work required under the provisions set forth in Section 18904 which is required by the magnitude of the endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to public health or safety and/or the environment. The action may be taken in default of, or in addition to remedial work by the responsible parties or other persons and regardless of whether injunctive relief is being sought.

(b) The Board may perform the work itself or in cooperation with any other governmental agency. Notwithstanding any other provisions of the law, the Board may enter into oral contracts for that work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are exempt from approval by the Department of General Services pursuant to section 10295 of the Public Contract Code.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New article 7 (sections 18928–18932) and section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18929. Cost Recovery.

(a) The Board shall pursue cost recovery for each site remediated with funds in accordance with this chapter unless under limited circumstances where a determination is made by the Board that cost recovery will not be pursued based on factors including but not limited to: publicly owned sites maintained in public benefit and use; property owner did not cause the disposal of waste; property owner did not and will not gain a benefit due to condition of property; value of property significantly less than cost of cleanup; hardship to property owner; and in cases where a responsible party cannot be identified.

(b) If a remedial action is taken in the case of threatened pollution or nuisance by the Board and/or any governmental agency, any costs incurred by the Board and/or governmental agency are recoverable from the responsible parties or parties who unlawfully caused such a condition or conditions. Any and all responsible parties are joint and severably liable for any such costs. The amount of those costs shall be recoverable in a civil action by, and paid to, the governmental agency and the Board to the extent of the latter's contribution to the cleanup costs from available funds.

(c) Reasonable costs shall include the amount expended, the Board's costs of contract administration, and an amount equal to the interest that would have been earned on the expended funds. The interest rate shall be based on the rate of return for money in the Surplus Money Investment Fund.

(d) Any and all responsible parties are joint and severably liable.

(e) The entry of judgement against any party to the action does not bar any future action by the Board against any other person who is later discovered to be potentially liable for costs paid from the trust fund.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48023, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18930. Responsible Parties Identification.

If, despite reasonable efforts by the Board to locate the person(s) responsible for the condition of pollution or nuisance, the person is not identified at the time of cleanup, abatement, or remedial action work

must be performed, the Board shall not be required to issue an order under this Chapter.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18931. Eligibility.

Funds may be used only for those costs eligible pursuant to Section 18904.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Section 48021(b), Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

§ 18932. Board Approval.

Upon determination that a site is eligible pursuant to Section 18904 of this Chapter, the site shall be considered by the appropriate Committee, and if necessary, for final recommendation to the Board for approval within ninety (90) days.

NOTE: Authority cited: Sections 40502 and 48025, Public Resources Code. Reference: Sections 48020 through 48028, Public Resources Code.

HISTORY

1. New section filed 9–11–2000; operative 9–11–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).

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Title 14. Natural Resources

Division 8. Environmental Affairs Agency

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Division 8. Environmental Affairs Agency

Chapter 1. Final Application Procedures: Local Government Coastal Management Improvement Program

§ 19001. Program Description.

(a) Pursuant to SB 959 (Division 25 (commencing with Section 35000) of the Public Resources Code) the Coastal Resources and Energy Assistance Act (Public Resources Code (PRC), Section 35000 et seq.), the Secretary of Environmental Affairs (SEA) shall award grants totalling $10.5 million and on a competitive basis to coastal cities for planning, assessment, mitigation, permitting, monitoring and enforcement, public services and facilities, and for other activities related to offshore energy development. These city activities shall be consistent with requirements of the State's Coastal Management Program as defined in the California Coastal Act, PRC Division 20 commencing with Section 3000.

(b) In awarding grants, SEA will give priority to projects which address existing and/or future impacts of offshore oil and gas activities and any related onshore facilities, in accordance with PRC Section 35040. In accordance with PRC Section 35040.5, any remaining funds may be awarded to coastal cities with approved local coastal programs to assist them in improving the management of the State's coastal resources. At such time that funds become available for allocation under Section 35040.5, the appropriate application procedures will be issued by SEA.

(c) Grants provided to coastal cities shall not exceed 80 percent of the cost of carrying out the project. Block grant funds provided pursuant to the Coastal County Offshore Energy Assistance Program as defined in the Coastal Resources and Energy Assistance Act must not be used as the matching share under this program. In accordance with PRC Section 35081, grant funds shall be used only to augment and not be used to replace state funds allocated for the same eligible activities.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Sections 35040, 35040.5, 35042 and 35081, Public Resources Code.

HISTORY

1. New Division 8 (Chapter 1, Sections 19001–19009) filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Division 8 (Chapter 1, Sections 19001–19009) repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New Division 8 (Chapter 1, Sections 19000–19009) filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19002. Eligible Applicants and Projects.

(a) Any coastal city is eligible to apply for grant funds. For purposes of this program, "coastal cities" are considered as those cities whose city boundaries are located wholly or partially within the coastal zone as defined in the California Coastal Act, as amended (Public Resources Code, Division 20, commencing with Section 30000). Projects addressing existing and/or future impacts of offshore energy development will first be considered. Upon determination of unused funds, SEA will invite applications to consider funding other projects pursuant to PRC Section 35040.5.

(b) Offshore energy development includes activities such as exploration, production, processing, transportation, and refining of offshore oil and gas from State and federal waters off California. Projects which address impacts of these activities may be eligible for funding. The following are examples of potentially eligible projects:

(1) Planning and Assessment.

(A) Develop local policies, regulations, or ordinances regulating offshore energy related developments.

(B) Conduct studies to identify environmental and/or socioeconomic impacts and mitigation measures associated with offshore energy development.

(C) Develop local plans or mitigation programs to address offshore energy related impacts.

(D) Conduct siting studies for onshore energy facilities for processing, transportation, and refining of offshore oil and gas.

(E) Develop an offshore energy planning process that is consistent with requirements of the State's Coastal Management Program.

(F) Analyze offshore leasing, exploration, and development proposals for purposes of commenting pursuant to the OCS Lands Act,(43 USC 1331–1356, 1801–1866), Coastal Zone Management Act, (16 USC 1451–1464), National Environmental Policy Act,(42 USC 4321—4347), California Environmental Quality Act,(PRC Sections 2100 et seq.), or similar statutes.

(2) Permitting, Monitoring and Enforcement.

(A) Develop a permitting, monitoring, and/or enforcement program for purposes of implementing state or local plans, policies, permit conditions, or regulations related to offshore energy development.

(B) Carry out monitoring and/or enforcement to ensure State or local environmental goals are attained and maintained.

(C) Conduct socioeconomic monitoring.

(3) Mitigations.

(A) Provide new or improved public facilities and/or services required to accommodate direct or indirect impacts of offshore energy development.

(B) Prevent, reduce or mitigate losses of valuable environmental or recreational resources when such losses are a result of offshore energy development.

(C) Capitalize revolving loan funds to provide low cost loans to coastal–dependent industries impacted by offshore energy development.

(D) Implement public information programs.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35040, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19003. Grant Process and Timetable.

(a) The schedule and key steps of this grant program are provided in Table 1. The application process consists of two stages.

(1) Stage One is pre–application. After informal consultation with the Office of Offshore Development, coastal cities will prepare and submit to SEA pre–applications for the projects which they believe should be funded. Pre–applications shall be prepared in conformance with the information requirements of Section 19004(a) below. SEA will screen the pre–applications based on the criteria in Section 19004(b). Projects meeting all criteria will advance to Stage Two.

(2) In Stage Two, coastal cities will prepare draft applications for the qualified projects. The application shall contain all information requested in Section 19005(a). In accordance with Section 35040(b), the drafts must be circulated locally and to the State Clearinghouse for public comments. At least one public hearing must be held by the applicant during the public comment period pursuant to Section 35040(b). Ten copies of each draft shall also be submitted to the State Clearing House 30 days prior to the public hearing, for review and comments by State agencies.

(b) Three copies of the final application shall then be submitted to SEA. The applications will be reviewed, and eligible applications shall be given a preliminary ranking according to the criteria in Section 19005(b). The preliminary rankings will be reviewed by SEA's Local Government OCS Advisory Committee. The Secretary will then approve the final rankings, and a notice of intent to award will be issued. As certification of compliance with California Environmental Quality Act

(CEQA), in accordance with Public Resources Code sections 21000 et seq. is completed by each applicant, the notice of intent to award will be issued on individual projects. Note that compliance with CEQA must be completed prior to the actual allocations of grant funds, in accordance with Public Resources Code section 21150.

(c) Following the Secretary's decision, issue of the notice of intent to award, a seven day protest period will be provided for filing a written appeal to the Secretary. Reasons why an application should be reconsidered shall be clearly stated. SEA shall determine whether or not to reconsider a project. Findings will be provided for projects which have received reconsideration. The decision of SEA shall be final. Rankings will be evaluated semi-annually in accordance with the ranking criteria described in Section 19005(b).

(d) Work on the approved projects shall not be initiated until the grant agreement is signed by SEA and the grantee. The agreement will include the following:

(1) Work statement contained in the grantee's application (or as amended per SEA evaluation);

(2) Schedule contained in the grantee's application (or as amended per SEA evaluation);

(3) Description of work products as contained in the grantee's application (or as amended per SEA evaluation);

(4) Written certification of compliance with the reporting and fiscal accounting requirements in Sections 19007 and 19008, below;

(5) Written certification of compliance with special conditions (if any);

(6) Written certification of compliance with CEQA, in accordance with PRC Sections 21000 et seq., and other applicable rules and regulations;

(7) Written certification of compliance with the State Coastal Management Program as constituted in Section 30008 of the California Coastal Act, PRC Division 20.

(e) The grantee shall obtain prior written approval from SEA before making changes to the grant agreement. All requests should include a description of the proposed change and reasons for the change. Such change may include budget line item revisions, task modifications, and schedule changes.

(f) SEA may terminate any grant in whole, or in part, at anytime before the date of completion, whenever SEA determines that the grantee has failed to comply with the terms and conditions of the grant. SEA shall promptly notify the grantee in writing of the determination, reasons for termination, and appeal process. Payment made to the grantee or recoveries by SEA under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(g) Projects funded under this grant program must be completed by May 1989 unless otherwise approved by SEA. Exceptions will be evaluated and granted on a case-by-case basis at the application stage in accordance with the ranking criteria described in Section 19005(b) below. Progress reports shall be submitted to SEA semi-annually, and a final report shall be submitted within 30 days after the end of the grant term.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 3500, Public Resources Code.

HISTORY

1. New section filed 7-22-86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-19-86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1-8-87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

TABLE 1.
LOCAL GOVERNMENT COASTAL MANAGEMENT IMPROVEMENT PROGRAM SCHEDULE

1986:	8/1	SEA disseminates program information and begins informal consultation with coastal cities
	10/1	Coastal cities submit pre-applications to SEA
	11/1	SEA releases pre-application screening results
	12/15	Coastal cities release draft applications for public comment and submit ten copies of each draft applications to the State Clearing House for circulation among the agencies 30 days prior to the dates of the required public hearings. Each applicant will announce public hearing date(s)
1987:	1/15	Public comments due to coastal cities
	2/15	Coastal cities submit final applications to SEA
	4/1	SEA submits preliminary rankings for review by the Local Government OCS Advisory Committee
	5/1	SEA approves final ranking. SEA issues notice of intent to award grant for individual projects on completion of certification of compliance with CEQA.
	5/8	Protest period ends
	5/15	SEA will issue notice of grant award after seven day protest period
	10/31	Quarterly Financial Report
1988:	1/31	Semi-annual Progress Report and Quarterly Financial Report
	4/30	Quarterly Financial Report
	7/31	Semi-annual Progress Report and Quarterly Financial Report
	10/31	Quarterly Financial Report
1989:	1/31	Semi-annual Progress Report and Quarterly Financial Report
	4/30	Quarterly Financial Report
	5/31	Maximum Grant Term
	6/30	Final Report

HISTORY

1. New Table 1 filed 7-22-86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-19-86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1-8-87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19004. Pre-Application.

(a) Information Requirements.

(1) Name of coastal city.

(2) Mailing address.

(3) Name and title of the person in charge of the project.

(4) Name and title of the person responsible for fiscal management of the grant.

(5) Brief (2-3 pages) project narrative including:

(A) Project description;

(B) Project objectives;

(C) Past and future offshore energy activities; potential impact or planning needs for the city and region (including size, severity, and likelihood of impacts); estimate of the resources and populations affected; extent to which the project will address the impacts or planning needs;

(D) Products;

(E) Expected benefits to the city and region;

(F) Description of current local planning, assessment, mitigation, permitting, monitoring and enforcement, and public services and facilities related to offshore energy activities; and the relationship of the proposed project to these existing capabilities;

(G) Other funding sources pursued;

(H) Alternative means to accomplish the objectives of the proposed project.

(6) Estimate of project costs and documentation of the required matching funds (submit Exhibit 1).

(7) Work statement describing the major tasks.

(b) Pre-application Screening Criteria.

(1) Documentation of existing and/or future offshore energy impacts on city.

(2) Cost effectiveness of the proposed project to address these impacts.

(3) Demonstration of local needs.

(4) Consistency with the purposes and allowable activities of Public Resources Code Sections 35000 et seq.

(5) Extent to which the requested grant amount is used to leverage other funding sources, with a minimum matching share requirement of 20 percent of the total project cost as required under Section 35042, Public Resources Code.

(6) Conformance with requirements of the State's Coastal Management Program.

(7) Use of innovative approaches to address offshore energy issues.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35040, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.1(g) (Register 87, No. 2).

§ 19005. Application.

(a) Information Requirements.

(1) Name of coastal city.

(2) Name and title of person in charge of the project.

(3) Name and title of person responsible for fiscal management of the grant.

(4) Detailed project narrative (should follow the same format required in the pre–application, as required in Section 19004(a)).

(5) Work statement describing tasks and products in detail.

(6) Description of needed resources with a completed fiscal application attached (Exhibit 2).

(7) Project schedule to present the relationship between work tasks and the amount of time required.

(8) Identification of applicable laws and regulations, including CEQA and the State Coastal Management Program, and evidence of compliance.

(9) Letters of commitment for matching funds.

(10) Summary of public comments and hearing held in compliance with Section 19003(a)(2).

(b) Application Ranking Criteria.

(1) Documentation of existing and/or future offshore energy impacts on city, including:

(A) type, extent, severity and duration of impacts.

(2) Comparison of project to alternatives, including cost effectiveness.

(3) Demonstration of need.

(A) Offshore energy impacts or planning issues which will be addressed by the proposed project.

(B) Urgency of the needs.

(4) Consistency with the purposes and allowable activities of Public Resources Code Section 35000 et seq.

(5) Extent to which the requested grant amount is used to leverage other funding sources, with a minimum matching share requirement of 20 percent of the total project cost.

(6) Conformance with requirements of the State's Coastal Management Program.

(7) Use of innovative approaches to address offshore energy issues.

(8) Timeliness of the project to address the issue or problem.

(9) Availability of alternative sources of funding.

(10) Likelihood that the project objectives will be achieved.

(11) Evidence of compliance with CEQA and other applicable laws and regulations.

(12) Other overriding factors not reflected in the above criteria, but consistent with the intent and purposes of Public Resources Code Sections 35000 et seq.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35040, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19006. Payment of Grant Funds.

Payment of funds will be made on a quarterly basis. The grantee may request payment of funds in advance of or as reimbursement for work undertaken during a given quarter. The grantee must indicate the option in the financial application (Exhibit 2) and quarterly financial status form (Exhibit 3). The grantee opting for advance payment must also complete the financial status report as a part of the grant application.

(a) Advance Payment Method.

(1) Grant funds may be paid in advance. In order to receive an advance payment, the grantee must submit to SEA a completed financial status form and a narrative statement justifying the anticipated expenditures, 45 days prior to the start of each 90 day funding period. For example, a payment request must be submitted by February 15 for the April–June quarter.

(2) For the first 90 day period of the grant, a request for advance payment will be based on the estimated first quarter expenditures as detailed in the initial quarterly financial report. Subsequent payments will be based on the submitted quarterly report, projected needs, and expenditures for the previous quarter.

(3) SEA will not authorize payment for:

(A) any request submitted without the narrative justification or

(B) any single advance payment request for most or all of the grant funds.

Exceptions may be considered when it can be conclusively demonstrated by the grantee that expenditures will occur at the requested level in any one calendar quarter.

(4) The grantee is required to keep track of expenditures and make accurate estimates of cash needs for each quarter. A grantee neglecting to document expenditures and keep cash balances to a minimum will be required to switch to the reimbursement method.

(b) Reimbursement Method.

A grantee choosing to receive funds as reimbursement must submit a quarterly financial status report to SEA within 20 days following the end of each quarter. All reimbursement requests must be accompanied by documentation of expenditures. SEA will not authorize payment for any expenses not identified on the quarterly report.

(c) Release of Funds.

(1) After SEA receives the appropriate reports, it will take approximately 45 days before the funds are released to the grantee. During the 45 day period, SEA will review all submitted reports and authorize the accounting unit to file a claim with the State Controller's Office. When the State Controller receives the claim, he will process it and issue a warrant to the grantee.

(2) SEA will not release funds if any of the agreements or terms of the grant has not been kept. SEA will impose other prepayment conditions as circumstances require.

(d) Retention.

SEA will retain 10 percent of each payment request. SEA will review the grantee's final reports within 45 days after their submission. If SEA determines that the terms of the grant have been met, the funds held in retention will be authorized for release.

(e) Matching Share.

(1) Any financial assistance provided to coastal cities will not exceed 80 percent of the cost of the project. Grant funds provided to coastal coun-

ties pursuant to Section 35030 will not be used as the city's matching share.

(2) As grant expenditures occur, the grantee's matching funds must be used concurrently with state grant fund and not be held in reserve.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35042, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19007. Fiscal Requirements for Grants.

(a) Standards for Accounting and Financial Systems.

(1) The grantee shall establish a separate ledger account for receipt and expenditures of grant funds. The expenditures will be for items contained in the approved budget.

(2) Grantee financial management systems shall:

(A) Provide separate accountability for grant activities;

(B) Ensure that grant funds are not commingled with other funds;

(C) Include cash flow management procedures to minimize cash balances; and

(D) Feature accounting records that are supported by source documents.

(b) Budget Revisions.

The grantee may revise and expend original line item allotments up to 10 percent without approval of SEA. The grantee must request prior approval in writing from SEA for budget revisions in excess of 10 percent of any line item. Petition for variance to this requirement may be approved when it is submitted with the application package. Budget revisions include transfer of funds between line items or an increase or decrease in expenditures within a line item. When requesting approval for a budget revision, the grantee shall use the budget format used in the original grant application and attach a description of the proposed change, including reasons for the charge, and references to specific sections of the original grant agreement impacted by the change. Requests for budget revisions must be sent under a separate cover to SEA. SEA will respond in writing to such requests within 30 days.

(c) Retention of Records.

Grant records, including financial records, performance reports, and requests for advance payments, shall be retained for a period of four years after the date of the final financial status report unless otherwise specified in the grant agreement.

(d) Audits.

SEA or authorized designee reserves the right to make on–site inspections and audits of the grantee's records. Further, the grantee agrees to incorporate an audit of this program within their scheduled agency audits when requested by SEA. The grantee will inform SEA when audits are scheduled. Upon written request from SEA, the grantee shall provide detailed documentation of all expenses any time during the project.

(e) Financial Reports.

The grantee shall submit to SEA a quarterly financial report including a narrative of the status and a completed financial status form (Exhibit 3). The report shall contain projected and/or actual expenditures and receipts, and a payment request. This report shall also be submitted as a part of the semi–annual progress reports and grant closeout.

(f) Program Income.

(1) Interest earned on advances must be reported on the financial status report. Interest income must be disposed of in one of the following manners:

(A) With prior approval from SEA, use to supplement grant funds to offset eligible grant expenditures;

(B) With prior approval from SEA, use to offset grant funds required, or;

(C) Submit a check payable to SEA for the full amount of the interest.

(2) All other income earned during the grant period shall be subject to the same procedures used for interest income.

(g) Revisions.

These fiscal requirements are subject to revision as a result of changes in state grant procedures. The grantee will be sent copies of revisions.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35041, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19008. Program Reports.

(a) Semi–annual Progress Report.

(1) The grantee shall submit to SEA a progress report by July 31 and January 31 of each year during the grant period. Each report shall include, but not be limited to:

(A) A discussion on whether the project tasks are on schedule;

(B) A discussion of any difficulties or problems encountered in accomplishing the work statement;

(C) Corrective actions that have been and/or will be taken the grantee must obtain prior written approval from SEA before making changes to the terms or conditions of the grant agreement;

(D) A financial report (see Section 19007(e)).

(b) Final Report.

(1) The grantee shall submit a final report within 30 days after the end of the grant term. This report shall include, but not be limited to:

(A) A discussion of existing or projected offshore energy impacts faced by the city, and the extent to which the project has addressed these impacts;

(B) A statement of the objectives of the project and how these objectives were accomplished;

(C) A summary of all products, with a copy of all reports associated with the project attached;

(D) A financial report (See Section 19007(e)).

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35041, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

§ 19009. Grant Closeout Procedure.

In the grant closeout process, the grantee will refund all unexpended grant funds, unused income, and credits to SEA unless other prior negotiated arrangements have been made. A check made payable to SEA, along with a final report, will be due 30 days after the end of the grant term. Upon approval of the final report, SEA will release the funds held in retention.

NOTE: Authority cited: Section 35041, Public Resources Code. Reference: Section 35041, Public Resources Code.

HISTORY

1. New section filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New section filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

EXHIBIT 1.
LOCAL GOVERNMENT COASTAL MANAGEMENT IMPROVEMENT PROGRAM
(Section 19004)

Secretary of Environmental Affairs
Fiscal Application For Grant Funds From The
Local Government Coastal Management Improvement Program Preapplication

1. Applicant/Payee: Name _____
   Street Address _____
   City/ZIP _____
2. Contact Person: Name _____ Phone Number _____
3. Proposed Grant Period from _____ to _____
4. Proposed Budget:
   Expenditures:

Line Item	Dollars
A. Salaries and Wages	$_____
B. Operating Expenses	$_____
C. Consulting Services	$_____
D. Construction Expenses	$_____
E. Fixed Assets	$_____
Total, Proposed Expenditures	$_____

   Funding:

A. Matching Funds:	$_____
B. Grant Funds	$_____
Total, Proposed Funding	$_____

5. Funding Method (check one) ___ Advance ___ Reimbursement
6. Certification:
   I certify to the best of my knowledge and belief, under penalty of perjury, that data in this application are true and correct.
   Grantee Signature: _____ Date: _____
   Name and Title: _____
7. Grant Manager Approval:
   Signature: _____ Date: _____
8. Secretary of Environmental Affairs Approval:
   Signature: _____ Date: _____
9. Chief, Air Resources Board Fiscal Branch Approval:
   Signature: _____ Date: _____

Instructions for the
Local Government Coastal Management Improvement Program
Fiscal Application Form

1 Applicant/Payee: Indicate organization the warrant should be made out to and include the appropriate address.

2 Contact Person: Individual who can respond to questions regarding information contained in this application.

3 Proposed Grant Period: The proposed calendar period for this grant.

4 Proposed Budget: Expenditures:

4A Salaries and Wages: Costs include salaries, retirement, workers compensation, employee benefits, group insurance, overtime, etc.

4B Operating Expenses: Identify the total costs for communications, insurance, laboratory supplies, maintenance of equipment, structures, and grounds, memberships, office expenses, publications and legal notices, rents and leases, tools, travel, utilities, and any other expenses necessary for routine office operations.

4C Consulting Services: Identify the total costs for contracted outside services.

4D Construction Expenses: Identify the total costs related to construction activities.

4E Fixed Assets: Expenditures for assets exceeding $500 in value that have a useful life of more than one year. Total, Proposed Expenditures: Total the amounts for Expenditures A–E.

4 Proposed Budget: Funding:

4A Matching Funds: Identify the amount of matching funds the grantee is going to contribute. This amount must be at least 20% of the proposed expenditures pursuant to Section 35042 of the Public Resources Code.

4B Grant Funds: Identify the requested level of grant funds. This amount must be less than or equal to 80% of the proposed expenditures pursuant to Section 35042 of the Public Resources Code. Total, Proposed Funding: Total of the amounts for Funding A–B. This total will match or exceed the total proposed expenditures.

5 Funding Method: Identify which method of payment the grantee desires. See Item 6 of the procedures for definition of methods.

6 Certification: Sign signature line and date it. Type in the name and title.

7 Grant Manager Approval: Self explanatory.

8 Secretary of Environmental Affairs Approval: Self explanatory.

9 Chief, Air Resources Board Fiscal Branch Approval: The Air Resources Board provides fiscal support to the Secretary of Environmental Affairs.

HISTORY

1. New Exhibit 1 filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New exhibit filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

EXHIBIT 2.
LOCAL GOVERNMENT COASTAL MANAGEMENT IMPROVEMENT PROGRAM
(Sections 19005 and 1006)

Secretary Of Environmental Affairs
Fiscal Application For Grant Funds From The
Local Government Coastal Management Improvement Program Application

1. Applicant/Payee: Name _____
   Street Address _____
   City/Zip _____
2. Contact Person: Name _____ Phone Number _____
3. Proposed Grant Period from _____ to _____
4. Proposed Budget (attach supporting schedules for each line item):
   Expenditures:

Line Item	Dollars
A. Salaries and Wages	$_____
B. Operating Expenses	$_____
C. Consulting Services	$_____
D. Construction Expenses	$_____
E. Fixed Assets	$_____
Total, Proposed Expenditures	$_____
Funding:	
A. Matching Funds:	$_____
B. Grant Funds	$_____
Total, Proposed Funding	$_____

5. Funding Method (check one) ___ Advance ___ Reimbursement
6. Certification:
   I certify to the best of my knowledge and belief, under penalty of perjury, that data in this application are true and correct.
   Grantee Signature: _____ Date: _____
   Name and Title:
7. Grant Manager Approval:
   Signature: _____ Date: _____
8. Secretary of Environmental Affairs Approval:
   Signature: _____ Date: _____
9. Chief, Air Resources Board Fiscal Branch Approval:
   Signature: _____ Date: _____

Instructions for the
Local Government Coastal Management Improvement Program
Fiscal Application Form

1 Applicant/Payee: Indicate organization the warrant should be made out to and include the appropriate address.

2 Contact Person: Individual who can respond to questions regarding information contained in this application.

3 Proposed Grant Period: The proposed calendar period for this grant.

4 Proposed Budget: Expenditures:

4A Salaries and Wages: Costs include salaries, retirement, workers compensation, employee benefits, group insurance, overtime, etc.

4B Operating Expenses: Identify the total costs for communications, insurance, laboratory supplies, maintenance of equipment, structures, and grounds, memberships, office expenses, publications and legal notices, rents and leases, tools, travel, utilities, and any other expenses necessary for routine office operations.

4C Consulting Services: Identify the total costs for contracted outside services.

4D Construction Expenses: Identify the total costs related to construction activities.

4E Fixed Assets: Expenditures for assets exceeding $500 in value that have a useful life of more than one year.
Total, Proposed Expenditures: Total the amounts for Expenditures A–E.

4 Proposed Budget: Funding:

4A Matching Funds: Identify the amount of matching funds the grantee is going to contribute. This amount must be at least 20% of the proposed expenditures pursuant to Section 35042 of the Public Resources Code.

4B Grant Funds: Identify the requested level of grant funds. This amount must be less than or equal to 80% of the proposed expenditures pursuant to Section 35042 of the Public Resources Code. Total, Proposed Funding: Total of the amounts for Funding A–B. This total will match or exceed the total proposed expenditures.

5 Funding Method: Identify which method of payment the grantee desires. See Item 6 of the procedures for definition of methods.

6 Certification: Sign signature line and date it. Type in the name and title.

7 Grant Manager Approval: Self explanatory.

8 Secretary of Environmental Affairs Approval: Self explanatory.

9 Chief, Air Resources Board Fiscal Branch Approval: The Air Resources Board provides fiscal support to the Secretary of Environmental Affairs.

HISTORY

1. New Exhibit 2 filed 7–22–86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–19–86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New exhibit filed 1–8–87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).

EXHIBIT 3.
LOCAL GOVERNMENT COASTAL
MANAGEMENT IMPROVEMENT PROGRAM
(Sections 19006 and 19007)

Secretary of Environmental Affairs
Local Government Coastal Management Improvement Program
Financial Status Form

Page 1 of 2

1a. Grantee Name and Address:

_____

_____

_____

_____

1b. Contact Person:
Name _____

Phone No. _____

2. Grant No. _____

3. Grant Period from _____ to _____

4. Type of Report:
___ Initial
___ Quarterly
___ Final
This quarter is quarter _____ of _____
from _____ to _____

5. Expenditure and Funding Statement

Expenditures: Line Item	Total Budget	This Quarter	To Date	Unliquidated Obligations	Unencumbered Balance
A. Salaries and Wages	$_____	$_____	$_____	$_____	$_____
B. Operating Expenses	_____	_____	_____	_____	_____
C. Consulting Services	_____	_____	_____	_____	_____
D. Construction Expenses	_____	_____	_____	_____	_____
E. Fixed Assets	_____	_____	_____	_____	_____
Total Expenditure	$_____	$_____	$_____	$_____	$_____
6. Funding:					
A. Matching	$_____	$_____	$_____	$_____	$_____
B. Other	_____	_____	_____	_____	_____
C. Grant Funds	$_____	$_____	$_____	$_____	$_____
Total Funds	$_____	$_____	$_____	$_____	$_____

7. Cash on Hand Status Statement
A. Cash on hand at end of this quarter $_____

8. Interest Statement
A. Interest earned on grant funds during this quarter $_____
B. Itemized expenditure of interest this quarter $_____
Total of interest expended this quarter $_____
C. Total interest earned to date $_____
D. Total interest expended to date $_____

9. Funding Method (check one) ___ Advance ___ Reimbursement

10. Grant Funds Requested $_____

11. Comments:

12. Certification:
I certify to the best of my knowledge and belief, under penalty of perjury, that these reports are correct and complete and that all information provided is in accordance with the grant agreement.
Grantee
Signature: _____ Date: _____
Name and Title: _____
(printed or typed)

13. Grant Manager Approval:
Signature: _____ Date: _____

14. Chief, Office of Offshore Development Approval:
Signature: _____ Date: _____

15. Accounting Use Only:
SEA Retention: ___% $_____
Scheduled Amount: $_____
Date: _____

Instructions for the
Financial Status Report

1a Grantee Name and Address: Self explanatory.
1b Contact Person: Individual who can respond to questions regarding information contained in this report.
2 Grant No.: Assigned by the Secretary of Environmental Affairs upon approval of the Grant Application.
3 Grant Period: Calendar period for this grant.
4 Type of Report: The initial report will be used by a grantee requesting an advance prior to start up of the project. All other types of reports are self explanatory. Include the appropriate reporting period.
5 Expenditure and Funding Statement (Use whole dollars only)
Total Budget: This column must reflect the budget as shown in the Grant Agreement. Refer to the guidelines for instructions regarding budget revisions.
This Quarter: Appropriate expenditure totals for line items during the period of this report. A grantee using the advance payment method should include actual and anticipated expenditures. Anticipated expenditures should be detailed in the Comments section.
To Date: Appropriate cumulative expenditure totals for line items from the beginning of the project up to the ending date of this report period.
Unliquidated Obligations: All funds obligated on purchase orders, contracts, etc., but not expended.
Unencumbered Balance: All funds available for expenditure or obligation. (Total Budget less To Date and Unliquidated Obligations equals Unencumbered Balance.)

Expenditures:

5A Salaries and Wages: Salaries, retirement, workers compensation, employee benefits, group insurance, overtime, etc.
5B Operating Expenses: Communications, insurance, laboratory supplies, maintenance of equipment, structure, and grounds, memberships, office expenses, publications and legal notices, rents and leases, tools, travel, utilities, and any other expenses necessary for routine office operations.
5C Consulting Services: Contracts for outside services.
5D Construction Expenses: All costs for related construction activities.
5E Fixed Assets: Expenditures for assets exceeding $500 in value that have a useful life of more than one year.
6 Funding:
6A Matching Interest, and other funds: Each of these items will be identified on their respective line. District matching funds must total at least 20% of the total grant funds expended pursuant to Section 35042 of the Public Resources Code.
6B Other: Enter all funds accounted for in the project's total budget not identified as grant funds or matching funds.
6B Grant Funds: This is the amount requested from grant funds. This amount must be less than or equal to 80% of the expenditures pursuant to Section 35042 of the Public Resources Code.
7 Cash on Hand Status Statement:
7A Cash on hand at end of quarter. Enter the grant cash on hand at the end of quarter including funds on deposit, funds on hand, and undeposited checks/warrants.
8 Interest Statement:
8A Enter only the amount of interest earned from grant funds during this quarter.
8B Itemize all activities funded this quarter with interest earned this quarter or previous quarters.
8C Enter the total of all interest earned from grant funds up to end of this quarter.
8D Enter the total of all expenditures of interest earned from grant funds up to the end of this quarter.
9 Funding Method: Indicate the chosen method for funding. See guidelines for detailed description of the advance and reimbursement methods available to grantees.
10 Grant Funds Requested: Indicate the dollar amount requested for the subsequent current quarter.
11 Comments: Space to describe special circumstances and situations impacting this report. Attach addition sheets if necessary
12 Certification: Self explanatory.
13 Grant Manager Approval: Self explanatory.
14 Chief, Office of Offshore Development Approval: Self explanatory.
15 Accounting Use Only: Space used by the Secretary of Environmental Affairs' accounting services to indicate payment information.

HISTORY

1. New Exhibit 3 filed 7-22-86 as an emergency; effective upon filing (Register 86, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11-19-86.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).
3. New Exhibit 3 filed 1-8-87; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 87, No. 2).
4. Change without regulatory effect filed 3-2-88 (Register 88, No. 11).

Chapter 2. Permit Reform Act Appeals to the Secretary of Environmental Affairs

§ 19020. Information Required to Appear on Permit Applications.

The following information shall be placed on the application forms for all permits subject to the Permit Reform Act of 1981 which are issued by the Air Resources Board or the Water Resources Control Board (hereinafter referred to as "board" or "boards"):

"The [name of board] has adopted regulations establishing time periods for the processing of permit applications in compliance with the Permit Reform Act of 1981 (Government Code section 15374 et seq.). Violations of these time periods may be appealed directly to the Secretary of Environmental Affairs, P.O. Box 2815, Sacramento, CA 95812, pursuant to regulations set forth in Title 14, California Administrative Code, sections 19020–19025. Under certain circumstances, the Secretary may order that the applicant receive a reimbursement of filing fees."

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY

1. New section filed 9-1-87; operative 10-1-87 (Register 87, No. 36).

§ 19021. Appeals to the Secretary; Contents.

An applicant whose application for a permit, as defined in Government Code section 15375(a), has not been processed by a board within the time periods established by the regulations of the board adopted pursuant to the Permit Reform Act of 1981 may appeal in writing to the Secretary of Environmental Affairs ("Secretary"). The applicant shall set forth the time periods applicable to the permit application and a concise statement of facts and chronology of events regarding the applications.

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY

1. New section filed 9-1-87; operative 10-1-87 (Register 87, No. 36).

§ 19022. Deadline for Appeals.

An appeal concerning a permit application on which a final decision has been made, must be filed within 30 days of the date the applicant was notified of the decision.

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY

1. New section filed 9-1-87; operative 10-1-87 (Register 87, No. 36).

§ 19023. Review by the Secretary.

The Secretary shall promptly review an appeal filed under sections 19021 and 19022 and, shall issue a decision within 30 days after conducting any investigation of the matter which she or he deems appropriate.

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY
1. New section filed 9–1–87; operative 10–1–87 (Register 87, No. 36).

§ 19024. Violations; Failure to Notify Whether Application Is Complete or Deficient.

If the Secretary finds that a board exceeded the time limit for informing the permit applicant whether an application is complete or is deficient and requires additional information to be processed, the Secretary shall direct the board to make its determination by a specified date and so inform the applicant. A complete application shall be considered to be filed on the date it is received, commencing the time period within which the board must issue or deny the permit.

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY
1. New section filed 9–1–87; operative 10–1–87 (Register 87, No. 36).

§ 19025. Violations; Refunds of Filing Fees; Final Action Required.

If the Secretary finds that a board exceeded the time period for acting on a completed application without the good cause defined by Government Code section 15376(h), all filing fees paid by the permit applicant will be refunded. The Secretary shall direct that the board take final action on the permit application no later than 30 days from the Secretary's decision.

NOTE: Authority cited: Section 15378, Government Code. Reference: Sections 15374–15378, Government Code.

HISTORY
1. New section filed 9–1–87; operative 10–1–87 (Register 87, No. 36).

Chapter 3. Voluntary Registration of Environmental Assessors

§ 19030. Definitions.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 7–30–87; operative 9–1–87 (Register 87, No. 32).
2. Amendment of subsection (b), and repealer and new subsection (c) filed 7–1–96 as an emergency; operative 7–1–96 (Register 96, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–29–96 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b), repealer and new subsection (c) refiled, and amendment of subsection (a) filed 10–25–96 as an emergency; operative 10–25–96 (Register 96, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–24–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–25–96 order transmitted to OAL 11–20–96 and filed 12–23–96 (Register 96, No. 52).
5. Amendment of section and NOTE filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
6. Change without regulatory effect renumbering title 14, division 8, chapter 3 (sections 19030–19044) to title 22, division 4.5, chapter 52 (sections 69200–69214) and renumbering title 14, section 19030 to title 22, section 69200 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19031. REA I Qualifications and Application Procedures.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 7–30–87; operative 9–1–87 (Register 87, No. 32).
2. Amendment of opening line and subsections (e) and (f) filed 7–1–96 as an emergency; operative 7–1–96 (Register 96, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–29–96 or emergency language will be repealed by operation of law on the following day.
3. Amendment of opening line and subsections (e) and (f) refiled 10–25–96 as an emergency; operative 10–25–96 (Register 96, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–24–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–25–96 order transmitted to OAL 11–20–96 and filed 12–23–96 (Register 96, No. 52).
5. Amendment of section heading, section and NOTE filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
6. Change without regulatory effect renumbering title 14, section 19031 to title 22, section 69201 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19032. REA I Registration, Renewal and Disqualification.

NOTE: Authority cited: Sections 25570.3, 59004 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New Section filed 7–30–87; operative 9–1–87 (Register 87, No. 32).
2. Amendment of section filed 7–1–96 as an emergency; operative 7–1–96 (Register 96, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–29–96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of subsection (b) (Register 96, No. 43).
4. Amendment of section refiled 10–25–96 as an emergency; operative 10–25–96 (Register 96, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–24–97 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–25–96 order transmitted to OAL 11–20–96 and filed 12–23–96 (Register 96, No. 52).
6. Amendment of section heading, section and NOTE filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
7. Amendment of subsections (b) and (c) and NOTE filed 5–24–2000; operative 5–24–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 21).
8. Change without regulatory effect renumbering title 14, section 19032 to title 22, section 69202 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19033. REA II Criteria for Registration.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19033 to title 22, section 69203 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19034. REA II Application for Registration.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19034 to title 22, section 69204 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19035. OEHHA's Review of Application.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19035 to title 22, section 69205 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19036. REA II Denial of Registration.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19036 to title 22, section 69206 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19037. REA II Renewal of Registration.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY
1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).

2. Change without regulatory effect renumbering title 14, section 19037 to title 22, section 69207 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19038. REA II Rescission of Registration.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19038 to title 22, section 69208 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19039. REA II Appeal Procedures.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19039 to title 22, section 69209 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19040. REA II Audits.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19040 to title 22, section 69210 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19041. Performance Standards.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19041 to title 22, section 69211 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19042. State Licensing Match System.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code; section 11350.6, Welfare and Institutions Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19042 to title 22, section 69212 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19043. Limitations on Registration for Aliens.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code; 8 U.S.C. Sections 1621, 1641 and 1642.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19043 to title 22, section 69213 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

§ 19044. Sunset Review.

NOTE: Authority cited: Sections 25570.3 and 59012, Health and Safety Code. Reference: Sections 25570–25570.4, Health and Safety Code.

HISTORY

1. New section filed 12–21–98; operative 12–21–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
2. Change without regulatory effect renumbering title 14, section 19044 to title 22, section 69214 filed 7–27–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

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Title 14. Natural Resources

Division 9. Delta Protection Commission

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Division 9. Delta Protection Commission

Chapter 1. Commission Hearing Procedures

§ 20000. Purpose.

These regulations establish the procedures by which the Delta Protection Commission processes, considers and resolves appeals from local governmental decisions which are brought before the Commission under the provisions of Public Resources Code §§ 29770–29772.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New division 9, chapter 1 and section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20001. Time for Appeal.

A person aggrieved by any action taken by a local government which falls within the criteria established in Public Resources Code § 29970(a) may file an appeal with the Commission within 10 calendar days of the date on which the pertinent local government has taken final action concerning the matter being appealed. For proposes of this section, "final action" means a decision of the local government that is final and not subject to any further review by any member or decision–making body of that local government.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20002. Contents and Filing of Appeal.

An appeal brought under these regulations shall be in writing and shall contain at least the following information:

a) the name and address of the appellant;

b) the name and address of the third party, if any, whose proposal is the subject of the appeal and the local government action being appealed;

c) a description of the proposal or development that is the subject of the local government action being appealed;

d) the identity of the local governmental body whose action is being appealed;

e) the specific ground(s) for appeal; and

f) a detailed statement of facts on which the appeal is based.

The appeal shall be considered "filed" with the Commission when the original letter from the appellant is received, determined by staff to contain all of the information listed above, and stamped "Filed" by the Commission with the date of filing indicated.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20003. Grounds for Appeal.

The grounds for appeal of a local government action shall be limited to those specified in Public Resources Code § 29770(a), i.e., that such action is inconsistent with the Commission's Resource Management Plan, those portions of a local government's general plan that implement the Resources Management Plan, or the Delta Protection Act.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20004. Commission Procedures Upon Receipt of Appeal.

Within five working days of receipt of an appeal, the executive director of the Commission shall:

a) post a notice and brief description of the appeal in a conspicuous location in the Commission office;

b) mail to the affected local government a copy of the same notice and brief description, together with a copy of the appeal document(s) filed with the Commission.

c) mail to the affected third party, if any, identified in § 20002(b) above a copy of the notice and brief description, together with a copy of the appeal document(s) filed with the Commission; and

d) mail copies of the notice and brief description to each member of the Commission.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20005. Effect of Appeal.

Upon receipt of a timely appeal, the executive director shall notify the affected local government and the third party, if any, identified in § 20002(b) above that the operation and effect of the local government's action has been stayed pending Commission action on the appeal as required by Public Resources Code § 29771. Upon receipt of an appeal, the executive director shall request that the affected local agency make available for inspection and copying all relevant documents and materials used by the local government in its consideration of the action being appealed. This information shall include the names and addresses of all persons who submitted written comments or testified before the local government regarding the matter being appealed. If the Commission fails to obtain access to the documents and materials on a timely basis, the Commission shall commence a hearing on the appeal as provided in § 20008, below, but shall leave the hearing open until all such relevant documents and materials are received and reviewed by the Commission.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20006. De Novo Review.

The Commission shall conduct a de novo review of the local government action being reviewed.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20007. Standard of Review.

The standard of Commission review of any appealable local government action shall be whether that action meets the requirements of Public Resources Code § 29770(a).

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20008. Hearing on Commission Jurisdiction/Appealable Issue.

a) The Commission's appellate review shall be conducted in a hearing composed of two sequential phases, held in accordance with the provisions of Public Resources Code § 29770. At the first available Commission meeting following filing of an appeal, but in no event more than 45 days thereafter, the Commission shall conduct an initial hearing and determine by majority vote whether the appeal;

i) raises issues not within the Commission's jurisdiction; or

ii) does not raise an appealable issue.

b) If the Commission finds either that the appeal raises issues outside the Commission's jurisdiction or that it fails to raise an appealable issue, the Commission shall dismiss the appeal. That dismissal constitutes final Commission action from which judicial review may be taken under Public Resources Code § 29772.

c) The Commission shall make the determination set forth in subsection (a) only after Commission staff has presented a recommendation,

orally or in writing, on the questions presented. Any written staff recommendation is a public record which shall be made available for public inspection at least five working days prior to the hearing.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20009. Hearing on Merits of Appeal.

Unless the Commission dismisses the appeal for the reasons set forth above, the Commission shall proceed to hear the appeal on its merits at the Commission's next available, regularly–scheduled meeting.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20010. Evidence and Hearing Procedures.

a) Hearings conducted by the Commission under these regulations shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unreasonable delay.

b) Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a court proceeding. Unduly repetitious or irrelevant evidence shall be excluded upon order of the Commission or its chairperson.

c) Evidence before the Commission includes, but is not limited to, the record before the local government whose action is being appealed. Except in unusual circumstances, the record will not include a transcript of the local government proceedings unless provided by a party to the proceedings.

d) Any interested person may testify before the Commission regarding an appeal. Speakers' presentation shall be to the point and shall be as brief as possible. Visual and other materials may be used as appropriate. The Commission may establish reasonable time limits for presentation(s); such time limits shall be made known to all affected persons prior to any hearing. Where speakers use or submit to the Commission visual or other materials, such materials shall become part of the hearing record and shall be identified and maintained as such. Speakers may substitute reproductions of models or other large materials but shall agree to make the originals available upon request of the executive director.

e) Commissioners may ask questions of the appellant, the affected local government's representative(s), any affected third party(s) appearing at the hearing, staff or the Commission's legal counsel. Questioning of speakers at the hearing by other persons shall not be permitted except by permission of the Chairperson.

f) Interested persons may submit written comments concerning an appeal. Any such comments will be considered by the Commission if they are received by the Commission at or before the hearing on the appeal.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20011. Commission Decision on Merits of Appeal.

a) The Commission's determination on the merits of an appeal brought under Public Resources Code § 29770 shall be by majority vote.

b) The Commission's decision shall be deemed final upon the taking of the vote, unless the Commission directs that written findings be prepared for consideration by the Commission on a subsequent date. If such findings are prepared, the Commission action shall be deemed final upon the date the findings are adopted by the Commission.

c) Written Commission findings, if any, shall be prepared by staff and presented to the Commission for consideration at the next regularly–scheduled meeting following the Commission's vote on the merits of the appeal. The time for preparation of findings may be extended by the Chair in appropriate circumstances.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20012. Notification of Commission Action.

The Commission shall notify the local government, the appellant and the affected third party, if any, identified in § 20002(b) of each formal action taking by the Commission under §§ 20008 and 20009. The notification shall be transmitted by the Executive Director within ten working days of the Commission's formal action.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

§ 20013. Ex Parte Contacts.

a) Decisions of the Commission on appeals heard under Public Resources Code § 29770 shall be based strictly on the evidence presented during the public hearing. The Commission shall not rely upon any communications, reports, staff memoranda, or other materials prepared in connection with a particular appeal unless those materials are made a part of the hearing record.

b) If commissioners receive written or oral communications from any person concerning a pending appeal outside the formal hearing process, they shall disclose, on the record and prior to a Commission vote on the appeal, both the existence and substance of the communications.

NOTE: Authority cited: Sections 29752 and 29770(b), Public Resources Code. Reference: Sections 29770–29772, Public Resources Code.

HISTORY

1. New section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

Chapter 2. Delta Protection Commission Regulations for CEQA Compliance (PRC § 21080.5)

§ 20015. Preparation of Draft Plan and Proposed Plan Amendments.

Commission staff shall prepare, or shall direct the preparation of, a draft Delta resource management plan. Commission staff shall prepare, or shall direct the preparation of, any proposed amendments to the Delta resource management plan. In addition to containing a description of standards, policies, and elements, for compliance with Public Resources Code Section 29760, the draft plan, and any proposed amendments to the plan, shall contain an analysis of potentially significant adverse environmental impacts which may result from the proposal, and an analysis of feasible alternatives and feasible mitigation measures to minimize any significant adverse environmental impacts from the proposal. The analysis shall address both short–term and long–term effects on the environment, and shall also address growth–inducing effects and potential cumulative impacts. If the analysis identifies significant adverse environmental impacts, it shall also include a statement describing public benefits which substantially lessen the significant environmental impacts of the proposal.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New chapter 2 and section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20016. Notice of Public Availability of Draft Plan and Any Proposed Amendments.

Commission staff shall provide notice of the availability of the draft plan, and any proposed amendments to the plan, for public review as follows:

(a) by mailing written notice to each Commission member, each agency represented by a Commission member, other agencies with jurisdiction by law over natural resources of the Delta, the Resources Agency, and any interested person, organization, or agency which has requested notice of the availability of the draft plan; and

(b) by publishing the written notice at least once in the newspaper of largest general circulation in the primary zone of the Delta. Such notice shall provide a public comment period of at least 30 days, and shall specify the date that the comment period closes. In addition to receiving written comments in response to the notice of public availability of the draft plan or proposed amendments, the Commission may hold public meetings and hearings to receive comments.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20017. Consultation Requirements.

Commission staff shall consult with all public agencies which have jurisdiction, by law, over the activities or the natural resources addressed by the draft plan or any proposed amendments to the plan.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20018. Response to Comments.

Commission staff shall prepare a written summary and response to all environmental points raised during the review of the proposal. The written summary and response to environmental points shall be presented for consideration and approval by the Commission before, or no later than at the same time as, the plan or proposed amendment is considered for adoption by the Commission.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20019. Adoption of the Plan.

In addition to the procedures specified by the Delta Protection Act, before adopting the plan, or any amendments to the plan, the Commission shall determine whether the plan or amendment, as proposed, may result in significant adverse environmental impacts, and, if so, whether feasible alternatives or feasible mitigation measures would substantially lessen any significant adverse impacts. The Commission shall not adopt the plan or amendment, as proposed, if there are feasible mitigation measures or alternatives which would substantially reduce any significant adverse impacts. If significant adverse impacts will likely result even after the inclusion of feasible mitigation measures or alternatives, the Commission may adopt the plan or amendment if it first makes findings in accordance with the provisions of Public Resources Code Section 21081(c).

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 21081(c), 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20020. Notice to the Resources Agency.

Commission staff shall file notice of the Commission's adoption of the plan, and any amendment thereto, with the Secretary for Resources and with the State Clearinghouse in the Office of Planning and Research.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

§ 20021. Consideration of Local Plan Amendments.

(a) Upon receipt of local agency general plan amendments which are proposed in order to conform to Public Resources Code Section 29763.5 Commission staff shall prepare a staff report and recommendation to the Commission. The staff report shall include an analysis of the proposed amendments in comparison to the plan and an analysis identifying any potentially significant adverse environmental impacts resulting from the proposal which were not previously addressed in the commission's planning documents. If there are no new potentially significant effects identified, then the staff report shall so state. If new potentially significant environmental impacts are identified, then the staff report shall analyze such impacts, and shall identify feasible mitigation measures and feasible alternatives which would substantially reduce such impacts.

(b) Notice of the availability of the staff report and staff recommendation concerning local general plan amendments shall be provided in the same manner as notice is provided in accordance with the procedures set forth in Section 20016 of these regulations. Commission staff shall consult with all public agencies which have jurisdiction by law over the activities or resources affected by the proposed general plan amendments.

(c) Commission staff shall prepare a written summary and response to all environmental points raised during the Commission's evaluation of the proposed general plan amendments. The summary and response shall be presented to the Commission for consideration and approval prior to or at the same time as the Commission considers proposed general plan amendments for approval.

(d) In approving local general plan amendments the Commission shall follow the procedures set forth in Section 20019 of these regulations. Commission staff shall file notice of the Commission's approval of local general plan amendments with the Secretary for Resources.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 21080.5, 21080.22, 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 8–17–94; operative 8–17–94 (Register 94, No. 33).

Chapter 3. Regulations Governing Land Use and Resource Management in the Primary Zone of the Sacramento–San Joaquin Delta

§ 20030. Overview.

(a) The Delta Protection Act of 1992 (Public Resources Code Section 29760 et seq.) requires the Commission to prepare and adopt and thereafter review and maintain a comprehensive long–term resource management plan for land uses within the Primary Zone of the Delta ("resource management plan"). The resource management plan is to set forth a description of the needs and goals for the Delta and a statement of the policies, standards, and elements of the resource management plan. Within 180 days of the adoption of the resource management plan or any amendments by the Commission, all local governments, as defined in Public Resources Code Section 29725, shall submit to the Commission proposed amendments which will cause their general plans, as defined in Government Code Section 65300 et seq., to be consistent with the criteria outlined in Public Resources Code Section 29763.5 with respect to land located within the Primary Zone. The following regulations are the policies of the resource management plan. The regulations to not apply to other local agencies, as defined in Public Resources Code Section 29724, or to reclamation districts.

(b) The term "shall" in these regulations is mandatory; the terms "may", "should", and "can" are advisory.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code; and Section 13274, Water Code.

HISTORY

1. New chapter 3 (section 20030) and section filed 1–28–97; operative 2–27–97 (Register 97, No. 5).
2. Editorial correction adding new chapter and section headings (Register 97, No. 6).
3. Amendment of chapter 3 heading, amendment of section heading, and repealer and new section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20040. Environment.

(a) The priority land use of areas of prime soil shall be agriculture. If commercial agriculture is no longer feasible due to subsidence or lack of adequate water supply or water quality, land uses which protect other beneficial uses of Delta resources, and which would not adversely affect agriculture on surrounding lands, or viability or cost of levee maintenance, may be permitted. If temporarily taken out of agriculture production due to lack of adequate water supply or water quality, the land shall remain reinstateable to agricultural production for the future.

(b) Agricultural and land management practices shall minimize subsidence of peat soils. Local governments shall support studies of agricultural methods that minimize subsidence and shall assist in educating landowners and managers as to the value of utilizing these methods.

(c) Lands managed primarily for wildlife habitat shall be managed to provide several inter–related habitats. Delta–wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" (Public Resources Code Section 9408(c)) and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20050. Utilities and Infrastructure.

(a) Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights–of–way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

(b) New houses built in the Delta agricultural areas shall continue to be served by independent potable water and wastewater treatment facilities. Uses which attract a substantial number of people to one area, including any expansions to the Delta communities, recreational facilities or businesses, shall provide adequate infrastructure improvements or pay to expand existing facilities, and not overburden the existing limited community resources. New or expanded construction of wastewater disposal systems shall ensure highest feasible standards are met, as determined by the local governing body. Independent treatment facilities shall be monitored to ensure no cumulative adverse impact to groundwater supplies.

(c) New sewage treatment facilities (including storage ponds) and new areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone. The Rio Vista project, as described in the adopted Final Environmental Impact Report for such project, and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids are exempt from this policy.

(d) High groundwater tables and subsiding soil make the Delta an inappropriate location for solid waste disposal. Generation of waste shall be minimized through recycling programs for metals, glass, paper, cardboard, and organic materials. Recycling depots for these materials shall be located in central locations to serve Delta residents, visitors, and businesses.

(e) Surface transportation in the Delta can be dangerous and congested. Roads within the Delta shall be maintained to serve the existing agricultural uses and supporting commercial uses, recreational users, and Delta residents. Where possible, commuter traffic and through traffic should be directed to surrounding highways and freeways, or minimized through programs which promote carpools, buses or trains.

(f) Air transportation in the Delta shall be allowed to continue to serve Delta residents and agriculture–related businesses. Due to subsidence, transmission lines, high winds, fog, and high raptor and waterfowl use, the Primary Zone is not an appropriate location for new or expanded general aviation airports.

(g) Operation of draw and swing bridges shall balance needs of land and water traffic. Commercial vessels and emergency road traffic shall have right–of–way over other traffic.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20060. Land Use.

(a) The rich cultural heritage and strong agricultural base of the Delta shall be preserved and recognized in public/private facilities, such as museums within the existing communities.

(b) Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long–term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

(c) New residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing agricultural use. Buffers shall adequately protect integrity of land for existing and future agricultural uses. Buffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet.

(d) New non–agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided.

(e) Local government general plans shall address criteria under which general plan amendments in the Primary Zone will be evaluated under Public Resources Code Section 29763.5. Proposed amendments to local government general plans for areas in the Primary Zone shall be evaluated in terms of consistency of the overall goals and program of the Delta Protection Commission.

(f) Subsidence control shall be a key factor in evaluating land use proposals.

(g) Structures shall be set back from levees and areas which may be needed for future levee expansion.

(h) Local government policies regarding mitigation of adverse environmental impacts under the California Environmental Quality Act may allow mitigation beyond county boundaries, if acceptable to reviewing fish and wildlife agencies, for example in approved mitigation banks. Mitigation in the Primary Zone for loss of agricultural lands in the Secondary Zone may be appropriate if the mitigation program supports continued farming in the Primary Zone.

(i) The implementation of the policies contained in the resource management plan shall not be achieved through the exercise of the power of eminent domain unless requested by the landowner.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20070. Agriculture.

(a) Commercial agriculture in the Delta shall be supported and encouraged as a key element in the State's economy and in providing the food supply needed to sustain the increasing population of the State, the Nation, and the world.

(b) Local governments, as defined in Public Resources Code Section 29725, shall identify the unique qualities of the Delta which make it well suited for agriculture. These qualities include: rich soil, ample supplies of water, long growing season, mild climate, and proximity to packaging and shipping infrastructure. The unique physical characteristics of the Delta also require that agricultural landowners maintain extensive levee systems, provide flood control, and have adequate drainage to allow the lands to be farmed.

(c) Education of the local populations about the value and rich heritage of agriculture in the State and in the Delta shall be continued and expanded.

(d) Local governments shall support long–term viability of commercial agriculture in the Delta because of its economic and environmental importance to the State and local communities.

(e) Support shall be given to current and alternative programs that help to minimize the need for costly production inputs such as fertilizers, pesticides, and herbicides as long as crop production levels and agricultural income can be maintained. Improving crop production and agricultural income is vital to the success of Delta agriculture.

(f) Each local government shall continue to implement the necessary plans and ordinances to: maximize agricultural parcel size; reduce subdivision of agricultural lands; protect ordinary agricultural activities; protect agricultural land from conversion to other uses; and clearly define areas in that jurisdiction where urban land uses are appropriate and where agricultural land uses are appropriate. An optimum package of regulatory and incentive programs would include: (1) an urban limit line; (2) minimum parcel size consistent with local agricultural practices and needs; (3) strict subdivision regulations regarding subdivision of agricultural lands to ensure that subdivided lands will continue in agriculture; (4) delete from zoning ordinances "other" land uses which are not compatible with agriculture; (5) require adequate buffers between agricultural and non–agricultural land uses particularly residential development outside but adjacent to the Primary Zone; (6) an agriculture element of the general plan; (7) a right–to–farm ordinance; and (8) a conservation easement program.

(g) Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta–wide habitat management plan.

(h) Local governments shall encourage management of agricultural lands which maximize wildlife habitat seasonally and year–round, through techniques such as sequential flooding in fall and winter, leaving crop residue, creation of mosaic of small grains and flooded areas, controlling predators, controlling poaching, controlling public access, and others.

(i) Local governments may continue to retain agricultural zoning and minimum parcel sizes as described in zoning codes in place January 1, 1992. Where minimum parcel size is less than 40 acres, local governments shall describe how smaller parcel sizes will support long–term viability of commercial agriculture in the Primary Zone. This policy shall not be construed to require the re–zoning of subminimum parcels.

(j)(i) Local governments may develop programs to cluster agriculture–dependent residential units or transfer development rights (TDRs) to off–site locations. Clustering on a single farm would be for family members or employees and would not exceed maximum number of units allowed under existing zoning as of January 1, 1992. Clustering would be accompanied by conditions to preserve agricultural use and open space values on the balance of the property. TDRs may involve transfers from farms to Primary Zone communities with adequate flood protection to protect residential use, or to sites out of the Primary Zone.

(ii) Local governments that pursue clustering or transfer of development rights shall proceed with adoption procedures to implement such programs as part of the local government implementation of the resource management plan.

(iii) Where portions of cities are located within the Primary Zone, cities shall indicate zoning which was in place on January 1, 1992. Future changes to city general plans or zoning ordinances shall conform to the resource management plan.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20080. Water.

(a) Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.

(b) Local governments shall ensure that design, construction, and management of any flooding program to provide seasonal wildlife habitat on agricultural lands shall incorporate "best management practices" to minimize mosquito breeding opportunities and shall be coordinated with the local vector control districts. (Each of the four vector control districts in the Delta provides specific wetland/mosquito management criteria to landowners within their district.)

(c) Water agencies at local, State, and federal levels shall work together to ensure that adequate Delta water quality standards are set and met and that beneficial uses of State waters are protected consistent with the CALFED (see Water Code Section 12310 (f)) Record of Decision dated August 8, 2000.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20090. Recreation and Access.

(a) Where public funds are limited, local governments shall promote maintenance and supervision of existing public recreation areas over construction of new public facilities.

(b) To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water–oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.

(c) Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

(d) Local governments shall improve public safety on Delta waterways through enforcement of local, State, and federal laws.

(e) Local governments shall encourage provision of publicly funded amenities in or adjacent to private facilities, particularly if the private facility will agree to supervise and manage the facility (fishing pier, overlook, picnic area) thus lowering the long–term cost to the public.

(f) Local governments shall support multiple uses of Delta agricultural lands, such as seasonal use for hunting, or improved parking and access sites.

(g) Local governments shall support improved access for bank fishing along State highways and county roads where safe and adequate parking can be provided and with acquisition of proper rights–of–access from the

landowner. Adequate policing, garbage cleanup, sanitation facilities, and fire suppression for such access shall be provided.

(h) New, renovated, or expanded marinas shall include adequate restrooms, pumpout facilities, trash containers, oily waste disposal facilities, and other facilities necessary to meet needs of marina tenants. Use fees may be charged for the use of these facilities but such fees shall not exceed the cost of maintenance.

(i) Local governments shall encourage new recreation facilities that take advantage of the Delta's unique characteristics.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20100. Levees.

(a) Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.

(b) If levee guidelines are needed, local governments shall adhere to guidelines for federal and local levee maintenance and construction at a minimum as stipulated in the Flood Hazard Mitigation Plan guidelines developed by California Office of Emergency Services and the Federal Emergency Management Agency in the 1987 agreement, and set longer term goals of meeting Public Law 84–99 (Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works), standards administered by the Corps of Engineers. If vegetation standards are needed, local governments shall adopt the adopted vegetation guidelines, which promote native grasses and limited vegetation on specific areas of the levee.

(c) Through flood ordinances based on Flood Emergency Management Act model ordinances, developed by the International Conference of Building Officials and included in the Uniform Building Code, local governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992, for lands in the Primary Zone.

(d) Local governments shall ensure that existing programs for emergency levee repair should be strengthened and better coordinated between local, State, and federal governments and shall include: interagency agreements and coordination; definition of an emergency; designation of emergency funds; emergency contracting procedures; emergency permitting procedures; and other necessary elements.

(e) Local governments shall use their authority to control levee encroachments that are detrimental to levee maintenance.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

§ 20110. Marine Patrol, Boater Education, and Safety Programs.

(a) Local governments that have or plan to have marine patrols shall possess adequate marine patrol equipment to ensure communication with other county marine patrols, with State patrols on Delta waters, and with the Coast Guard.

(b) Local governments that have marine patrols shall notify the Coast Guard when and where patrols are on the water.

(c) Local governments that have marine patrol units shall participate in at least one Coast Guard, or Delta Protection Commission sponsored meeting per year to coordinate with other Delta law enforcement programs to develop strategies for effective control, to discuss new laws and programs, and generally increase effectiveness and communication between the various marine patrol programs.

(d) Local governments that have or plan to have marine patrol, boater education, and/or safety programs shall develop methods for quick processing of intoxicated boat operators that would ensure that marine patrol staff remains on the water.

(e) Local governments that have or plan to have marine patrol services shall recognize towing of disabled vessels as a low priority activity and should develop relationships with volunteer groups or private vendors to provide such services.

(f) Local governments that have or plan to have marine patrol, boater education, and/or safety programs shall develop funding and implementation strategies to remove abandoned vessels from county waterways to avoid pollution of Delta waters and remove hazards to navigation.

(g) Local governments that have or plan to have marine patrol programs shall coordinate with Department of Fish and Game to provide support in enforcement of State hunting and fishing laws.

(h) Local governments that have or plan to have marine patrol programs shall provide adequate levels of marine patrol to ensure public health and safety on the waters of the Delta, taking into account funding available and the number of vessels moored in the Delta, launched into the Delta, and which travel into the Delta.

(i) Local governments that have or plan to have marine patrol, boater education, and/or safety programs shall identify problems and solutions surrounding crimes of environmental pollution which can be addressed by local governments. Local governments shall consider feasible solutions (additional pump–outs, dye tablets in holding tanks, rewards for observers, etc.).

(j) Local governments that have or plan to have marine patrol, boater education, and/or safety programs shall implement or support education and safety programs to address local, state, and federal laws aimed especially at personal water craft operators and means to encourage attendance at such programs.

(k) Local governments that have or plan to have boater education programs shall implement or support boater education programs to address local, State, and federal laws and means to encourage attendance at such programs.

(*l*) Local governments that have or plan to have marine patrol programs shall encourage and coordinate with volunteer programs within their jurisdiction as a way to supplement human resources on the Delta waterways.

(m) Local governments that have or plan to have marine patrol programs shall ensure that adequate funds are reserved for marine patrol services. Sources could include: reservation of existing funds such as vessel property tax, launch ramp fees, fines collected from violators, county share of Fish and Game Code violation fines, and possible funds generated from rental houseboats, boats or personal watercraft, or from marina berths.

NOTE: Authority cited: Section 29752, Public Resources Code. Reference: Sections 29760, 29763 and 29763.5, Public Resources Code.

HISTORY

1. New section filed 5–8–2001; operative 6–7–2001 (Register 2001, No. 19).

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Division 10. San Joaquin River Conservancy

Chapter 1. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 25001. Definitions.

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

(b) "Small Business" means a firm that complies with the provisions of Government Code Section 14837.

(c) "Executive Officer" means the Executive Officer of the San Joaquin River Conservancy.

(d) "Conservancy" means the San Joaquin River Conservancy, established pursuant to the provisions of the Public Resources Code, commencing with Section 32500.

(e) "Architectural, landscape architectural, engineering, environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.

(f) The term "Disabled Veteran Business Enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4525, Government Code; and *Monterey Mechanical Co. v. Wilson* (1997) 125 F.3d 702, 706 fn. 5.

HISTORY

1. New division 10, chapter 1 (sections 25001–25012) and section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25002. Selection Criteria.

The Executive Officer shall utilize selection criteria for each proposed project which will comprise the basis for the selection of eligible firms to perform the required services. The criteria shall include such factors as:

(a) Professional experience of the firm in performing services of similar nature.

(b) Quality and relevance of recently completed or ongoing work.

(c) Reliability, continuity, and location of firm to the project site.

(d) Staffing capability.

(e) Education and experience of key personnel to be assigned.

(f) Knowledge of applicable regulations and technology associated with the services required.

(g) Specialized experience of the firm in the services to be performed.

(h) Participation as small business firm.

(i) Other factors the Executive Officer deems relevant to the specific task to be performed.

These factors shall be weighted by the Executive Officer according to the nature of the proposed project, the complexity and special requirements of the specific services or project, and the needs of the Conservancy.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.5, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25003. Announcement of Project.

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and through the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, as a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Conservancy, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Executive Officer shall identify potentially qualified small business firms interested in contracting with the Conservancy, and provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Executive Officer to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25004. Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Executive Officer shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in Section 25002 of these regulations, and rank, in order of preference, the firms determined to be eligible to perform the required services.

(b) The Executive Officer shall conduct discussions with at least the three most eligible firms, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Executive Officer shall select, in order of preference, not less than three firms deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4627, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25005. Estimate of Value of Services.

(a) Before entering into discussion with any firm selected pursuant to section 25004 of these regulations, the Executive Officer shall prepare, or direct the preparation of, an estimate of the value of the proposed project, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of section 25007 of these regulations, and shall not be disclosed until after the award of the contract or the abandonment of the negotiation process for the services to which it relates.

(b) At any time that the Executive Officer determines the estimate of value of services to be unrealistic for any reason, the Executive Officer shall require the estimate to be reevaluated and, if deemed necessary, modified.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25006. Statewide Participation Goals.

In the negotiation of a satisfactory contract as provided in section 25007 of these regulations, the best qualified firm must meet the statewide participation goal of not less than 3 percent for disabled veteran business enterprises, or demonstrate that a good faith effort was made to meet it, in order to comply with the statewide participation goals as required by the regulations contained in Title 2, California Code of Regulations, Sections 1896.61–1896.64.

NOTE: Authority cited: Section 4526, Government Code; Section 10115, Public Contract Code; and Section 999, Military and Veterans Code. Reference: Section 4528, Government Code; Sections 10115, 10115.1 and 10115.2, Public Contract

Code; Sections 999, 999.1, 999.2 and 999.3, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson* (1997) 125 F.3d 702, 706 fn. 5.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25007. Negotiation.

(a) From among the firms selected through the procedure described in section 25004 of these regulations, as those most highly qualified to perform the services required, the Executive Officer shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable.

(b) If the Executive Officer is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Conservancy determines is fair and reasonable, then negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) If the Executive Officer is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b) immediately above, the Executive Officer shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Executive Officer shall abandon the negotiation process for the requested services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4527 and 4528, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25008. Amendments.

If the Executive Officer determines that a change in the contract is necessary during the performance of the services being provided, then the contracting parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the contract terms, conditions and specifications for the services involved, with a reasonable adjustment also in the compensation provided for the services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4528, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25009. Contracting in Phases.

If the Executive Officer determines it is necessary or desirable for the project to be performed in separate phases, the Executive Officer may negotiate a partial compensation for the initial phase of the services required; provided, however, that the Executive Officer first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Conservancy may, at its option, utilize the firm to perform other phases of the services at a compensation which the Conservancy determines is fair and reasonable, to be later negotiated and included in a mutually acceptable written agreement. In the event that the Conservancy exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter with regard to estimates of value of services and negotiation shall similarly be followed.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25010. Executive Officer's Power to Require Bids.

If the Executive Officer determines that the services are technical in nature and involve little professional judgement and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Chapter.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4529, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25011. Unlawful Consideration.

Each contract shall include a provision by which the contracting firm warrants to the state that the contract was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any Conservancy officer or employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Conservancy under the default provisions of the contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

§ 25012. Prohibited Relationships.

No Conservancy employee or officer who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 87100 and 87102, Government Code.

HISTORY

1. New section filed 10–15–98; operative 11–14–98 (Register 98, No. 42).

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Chapter 1. Coachella Valley Mountains Conservancy

§ 25050. Conflict of Interest Code.

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Coachella Valley Mountains Conservancy.

Designated employees shall file their statements of economic interests with the Coachella Valley Mountains Conservancy. Upon receipt of the statements of the members of the Coachella Valley Mountains Conservancy, the Conservancy shall make and retain copies and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the Coachella Valley Mountains Conservancy and made available for public inspection and reproduction. (Gov. Code, § 81008).

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

1. New division 11 (chapter 1), chapter 1 (section 25050), section and Appendices A and B filed 6–23–2003; operative 7–23–2003. Approved by Fair Political Practices Commission 5–12–2003 (Register 2003, No. 26).

Appendix A

Designated Positions	*Assigned Disclosure Categories*
Chairperson, Vice–Chairperson, all Board members and Designees	1
Consultants paid by the Conservancy[1]	1
Executive Director	1
Associate Director	1

Appendix B

Disclosures Categories

Category 1

Persons in this category are required to report:

(1) All real property or an interest in real property located within or not more than two miles from the boundaries of the Coachella Valley.[2]

(2) All sources of income from, and all investments and business positions in, entities which are of the type which provide goods, services, equipment, leased space, materials, supplies or machinery to the Conservancy.

[1]With respect to consultants the Executive Director, however, may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

[2]For purposes of this Appendix, "Coachella Valley" means the jurisdictional limits of the Coachella Valley Mountains Conservancy as set forth in Public Resources Code § 33502.

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§ 25201. Conflict of Interest Code.

The Political Reform Act, Government Code Section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, California Code of Regulations, title 2, section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to the amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the San Diego River Conservancy.

Designated employees shall file their statements of economic interests with the San Diego River Conservancy. Upon receipt of the statements of the governing board of the San Diego River Conservancy, the San Diego River Conservancy shall make and retain copies and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the San Diego River Conservancy and made available for public inspection and reproduction. (Gov. Code, § 81008).

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

1. New division 13 (chapter 1), chapter 1 (section 25201), section and Appendices A and B filed 1–11–2005; operative 2–10–2005. Approved by Fair Political Practices Commission 11–9–2004 (Register 2005, No. 2).

Appendix A

Designated Positions	*Assigned Disclosure Categories*
Chairperson, Vice–Chairperson, all Board members and Designees	1
Consultants paid by the Conservancy[1]	1
Executive Officer	1

Appendix B

Disclosure Categories

Category 1

Persons in this category are required to report:

(1) All interests in real property located within or not more than two miles from the boundaries of the San Diego River Area.[2]

(2) All investments and business positions in, and income, including gifts, loans and travel payments, from entities which are of the type to provide goods, services, equipment, leased space, materials, supplies or machinery to the Conservancy.

[1]With respect to consultants the Executive Officer, however, may determine in writing that a particular consultant, although a "designated person," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

[2]For purposes of this appendix, "San Diego River Area" means the jurisdictional limits of the San Diego River Conservancy as set forth in Public Resources Code sections 32644 and 32632, subdivision (f).

Chapter 2. Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms

§ 25202. Definitions.

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

(b) "Small Business" means a firm that complies with the provisions of Government Code Section 14837.

(c) "Executive Officer" means the Executive Officer of the San Diego River Conservancy.

(d) "Conservancy" means the San Diego River Conservancy, established pursuant to the provisions of the Public Resources Code, commencing with Section 32630.

(e) "Architectural, landscape architectural, engineering, environmental, land surveying services" and "construction project management" means those services, as defined in Section 4525 of the Government Code.

(f) The term "Disabled Veteran Business Enterprise" shall have the meaning set forth in Section 999 of the Military and Veterans Code.

NOTE: Authority cited: Section 32643, Public Resources Code; Article XXII, Sections 1 and 2, California Constitution; and Section 4526, Government Code. Reference: Section 32643, Public Resources Code; and Sections 4525–4529.5, Government Code.

HISTORY

1. New chapter 2 (sections 25202–25211) and section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25203. Selection Criteria.

With respect to architecture, landscape architecture, engineering, environmental services, land surveying or construction project management contracts, the Executive Officer shall utilize selection criteria for each proposed project which will comprise the basis for the selection of eligible firms to perform the required services. The criteria shall include such factors as:

(a) Professional experience of the firm in performing services of similar nature.

(b) Quality and relevance of recently completed or ongoing work.

(c) Reliability, continuity, and location of firm to the project site.

(d) Staffing capability.

(e) Education and experience of key personnel to be assigned.

(f) Knowledge of applicable regulations and technology associated with the services required.

(g) Specialized experience of the firm in the services to be performed.

(h) Status as a certified small business firm.

(i) Status as a disable veteran business enterprise (DVBE) and good faith effort of the contractor to contract with DVBEs to assist the Conservancy in its efforts to meet statewide participation goals for DVBEs as set forth in Public Contract Code section 10115.

(j) Other factors the Executive Officer deems relevant to the specific task to be performed. These factors shall be weighted by the Executive Officer according to the nature of the proposed project, the complexity and special requirements of the specific services or project, and the needs of the Conservancy.

NOTE: Authority cited: Section 32643, Public Resources Code; Article XXII, Sections 1 and 2, California Constitution; and Section 4526, Government Code. Reference: Section 32643, Public Resources Code; and Sections 4525–4529.5, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25204. Announcement of Project.

(a) An annual statewide announcement of expected needs for architecture, landscape architecture, engineering, environmental services, land surveying or construction project management services shall be pub-

lished in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and through the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, as a minimum, a brief description of the services required, location, duration, eligibility and preferences, submittal requirements, contact person for the Conservancy, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Executive Officer shall identify potentially qualified small business firms interested in contracting with the Conservancy, and provide copies of project announcements to those small business films that have indicated an interest in receiving the announcements. Failure of the Executive Officer to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 32643, Public Resources Code; Article XXII, Sections 1 and 2, California Constitution; and Section 4526, Government Code. Reference: Section 32643, Public Resources Code; and Sections 4525–4529.5, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25205. Selection of Qualified Firms.

(a) After the expiration of the final response date in the published project announcement, the Executive Officer shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria contained in section 25203 of these regulations, and rank, in order of preference, the firms determined to be eligible to perform the required services.

(b) The Executive Officer shall conduct discussions with at least the three most eligible firms, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Executive Officer shall select, in order of preference, not less than three firms deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 32643, Public Resources Code; Article XXII, Sections 1 and 2, California Constitution; and Section 4526, Government Code. Reference: Section 32643, Public Resources Code; and Sections 4525–4529.5, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25206. Statewide Participation Goals.

Contracts awarded under this chapter shall have statewide participation goals of not less than three percent for DVBEs as specified in Public Contract Code section 10115.

NOTE: Authority cited: Section 32643, Public Resources Code; Article XXII, Sections 1 and 2, California Constitution; Section 4526, Government Code; Section 10115, Public Contract Code; and Section 999, Military and Veterans Code. Reference: Section 32643, Public Resources Code; Section 4528, Government Code; Sections 10115, 10115.1 and 10115.2, Public Contract Code; and Sections 999, 999.1, 999.2 and 999.3, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson* (1997) 125 F.3d 702, 706 fn. 5.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25207. Negotiation.

(a) From among the firms selected through the procedure described in section 25205 of these regulations, as those most highly qualified to perform the services required, the Executive Officer shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable.

(b) If the Executive Officer is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Conservancy determines is fair and reasonable, then negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If the Executive Officer is unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Conservancy determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) If the Executive Officer is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b) immediately above, the Executive Officer shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Executive Officer shall abandon the negotiation process for the requested services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4527 and 4528, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25208. Contracting in Phases.

If the Executive Officer determines it is necessary or desirable for the project to be performed in separate phases, the Executive Officer may negotiate a partial compensation for the initial phase of the services required; provided, however, that the Executive Officer first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Conservancy may, at its option, utilize the firm to perform other phases of the services at a compensation which the Conservancy determines is fair and reasonable, to be later negotiated and included in a mutually acceptable written agreement. In the event that the Conservancy exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of this Chapter with regard to estimates of value of services and negotiation shall similarly be followed.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4528, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25209. Executive Officer's Power to Require Bids.

If the Executive Officer determines that the services are technical in nature and involve little professional judgement and that requiring bids would be in the public interest, a contract shall be awarded on the basis of competitive bids and not the procedures of this Chapter.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4529, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25210. Unlawful Consideration.

Each contract shall include a provision by which the contracting firm warrants to the state that the contract was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any Conservancy officer or employee. Failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the Conservancy under the default provisions of the contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

§ 25211. Prohibited Relationships,

No Conservancy employee, officer or Board member who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 87100 and 87102, Government Code.

HISTORY

1. New section filed 1–29–2008; operative 2–28–2008 (Register 2008, No. 5).

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Title 14. Natural Resources

Division 14. Sierra Nevada Conservancy

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Chapter 1. Sierra Nevada Conservancy

§ 25231. Conflict of Interest Code of the Sierra Nevada Conservancy.

(a) The terms of Title 2, California Administrative Code, Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby adopted and incorporated by this reference, and together with the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the Sierra Nevada Conservancy.

(b) Designated employees shall file their statements with the Sierra Nevada Conservancy which will make the statements available for public inspection and reproduction. Upon receipt of the statements for Board Members, Alternates and the Executive Officer, the agency shall make and retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

Appendix

Designated Employees	*Disclosure Categories*
Board Members and Alternates	A, B
Executive Officer	A, B
Staff Members	
Staff Counsel	A, B
Staff Services Manager (Director of Administration)	A, B
Program Manager	A, B
Program Analysts	A
Information Systems Analysts	B
Executive Secretary	B
Management Services Technician	B
Consultants and Contractors paid by the Conservancy	C

Disclosure Categories

Category A

Persons in this category must report all investments, interests in real property, income (including gifts, loans and travel payments other than travel reimbursements paid by the Conservancy), and any business position with any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management, subject to the following limitations:

(a) Income is reportable only if it is received from a source within the region or, if that source is doing business within the region, planning to do business within the region, or has done business within the region during the two–year period prior to the time any statement is required under this code.

(b) An interest in real property is reportable only if the property, or any part of it, is located within or not more than two miles outside the boundaries of the region.

(c) Investments are reportable only if the business entity has an interest in real property in the region, or does business, or plans to do business, in the region, or has done business within the region at any time during the two–year period prior to the time any statement is required under this code.

(d) Business entities are reportable for purposes of business position disclosure only if the business entity is doing business, or plans to do business, within the region or has done business within the region at any time during the two years prior to the time any statement is required under these regulations.

(e) For purposes of the above limitations the term "region" means the Sierra Nevada Region as described by Public Resources Code section 33302(f).

Category B

Persons in this category shall disclose any investment in a business entity, business position in a business entity, and income from a source (including gifts, loans, and travel payments other than travel reimbursements paid by the Conservancy), if the business entity or source of income is of a type to do business with the Conservancy or to contract with the Conservancy to provide goods, services, equipment, materials or facilities to or used by the Conservancy.

Category C

Persons in this category are considered designated employees, are subject to the disclosure categories in A and B and the disqualification requirements described in the standard Conflict of Interest Code, section 18730(b)(9). The Executive Officer, however, may determine in writing that a particular consultant, although a "designated employee," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as other statements filed in accordance with this conflict of interest code.

NOTE: Authority cited: Section 33300 and 33325(b), Public Resources Code; and Sections 87300 and 87304, Government Code. Reference: Sections 87300 et seq., Government Code.

HISTORY

1. New division 14 (chapter 1), chapter 1 (section 25231), section and Appendix filed 12–28–2006; operative 1–27–2007. Approved by Fair Political Practices Commission 10–24–2006 (Register 2006, No. 52).

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